Brf. of Hornblower, Davies & Hadley for P. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1899.

Filed Dec. 7, 1899.

No. 101.

FRED STEARNS, as County Auditor of Aitkin County, Minnesota,
Plaintiff in Error,

against

STATE OF MINNESOTA, on the relation of JAMES N. MARR,
Defendant in Error.

Brief for Plaintiff in Error on Behalf of St. Paul and Duluth Railroad Company.

WILLIAM B. HORNBLOWER,
JULIEN T. DAVIES,
EMERSON HADLEY,
Of Counsel for St. Paul and Duluth Railroad Company, on behalf of Plaintiff in Error.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

Supreme Court of the United States.

FRED STEARNS, as County Auditor of Aitkin County, Minnesota,
Plaintiff in Error,

AGAINST

STATE OF MINNESOTA, on the relation of JAMES N. MARR,
Defendant in Error.

October Term, 1899.
No. 102.

Brief for Plaintiff in Error on Behalf of St. Paul and Duluth Railroad Company.

STATEMENT.

This cause comes before this Court on a writ of error to review the decision of the Supreme Court of the State of Minnesota. The assignment of errors will be found at pages 2 and 3 of the printed record.

The controversy herein arises under a statute passed by the Legislature of Minnesota in the year 1895, being Chapter 168 of the General Laws of that year. This statute is claimed by the plaintiff in error to be in violation of the Constitution of the United States as impairing the obligation of the contracts contained in various prior statutes of the State granting lands to the St. Paul and Duluth Railroad Company and other railroads upon certain conditions therein set forth.

The Supreme Court of Minnesota held that the Act of 1895 did not violate the provisions of the United States Constitution, and was a valid act of the Legislature.

This cause came before the Supreme Court of Minnesota on an appeal from the decision of the District Court of the Fifteenth Judicial District, granting a writ of mandamus on the relation of James N. Marr, a taxpayer of the County of Aitkin, which writ of mandamus directed Fred Stearns, as County Auditor of Aitkin County, to place upon the tax list of the County of Aitkin for the year 1897 certain lands in said county.

The findings made in the District Court, based on admissions made upon the trial of allegations of the answer (Record, pp. 28–38), show that a portion of these lands, to wit, the first parcel described in the alternative writ of mandamus "is now, and for several "years last past has been, the property of the St. Paul "and Duluth Railroad Company" (on behalf of whom this brief is filed). The findings further show that the St. Paul and Duluth Railroad Company was originally incorporated by the Legislature of the Territory of Minnesota under the title of "Nebraska and Lake "Superior Railroad Company," by an act approved May 23, 1857. This act was amended by the Legislature of the State of Minnesota by an act approved March 8th, 1861, which granted to the company certain swamp lands which had previously been granted to the State of Minnesota by the United States pursuant to Acts of Congress. By an act approved March 6, 1863, and various other acts subsequently passed, the name of the company was changed to the Lake Superior and Mississippi Railroad Company, and the Act of 1857 further amended. On or before January 1st, 1874, the Lake Superior and Mississippi Railroad Company defaulted in payment of interest on its first mortgage bonds, and a foreclosure suit was brought, and on or about March 8, 1877, a decree was made foreclosing the mortgage

and directing a sale. Thereafter all the franchises, rights, immunities and properties of the Lake Superior and Mississippi Railroad Company were sold and thereafter were duly transferred to a new corporation organized pursuant to an act of the legislature of Minnesota approved March 6, 1876, which corporation was known and has ever since been known as the St. Paul and Duluth Railroad Company, and the St. Paul and Duluth Railroad Company became thereby entitled to all the corporate and other franchises and all the rights, privileges, immunities and property of the Lake Superior and Mississippi Railroad Company. All of the foregoing facts were admitted by relator on the trial, as set forth in the answer (pp. 54, 55).

By an act of Congress approved May 5, 1864, entitled:

"AN ACT making a grant of lands to the State of
"Minnesota to aid in the construction of a
"Railroad from St. Paul to Lake Superior"

the United States granted to the State of Minnesota for the purpose of aiding in the building of a line of railroad from the City of St. Paul to the head of Lake Superior, being the road authorized to be constructed by, and referred to in the said several Acts of the State of Minnesota hereinbefore referred to, every alternate section of public land of the United States designated by odd numbers to the amount of five alternate sections per mile on each side of the said railroad on the line thereof, within the State of Minnesota; with the right, in case any lands were lost from the grant before the definite location of the line of road, to select indemnity lands therefor from the lands of the United States nearest to the line of sections granted as aforesaid in certain sections or parts thereof within twenty (20) miles of said line of road.

Thereafter by an Act of Congress, approved July 13, 1866, entitled, "An Act to amend an Act making a

" grant to the State of Minnesota to aid in the con-
" struction of a Railroad from St. Paul to Lake Su-
" perior; approved May 5, 1864," it was provided that in case it should appear, when the line of the Lake Superior and Mississippi Railroad had been definitely located that the quantity of land intended to be granted by the Act of May 5, 1864, in aid of the construction of said road should be deficient, by reason of the line thereof running near the boundary line of the State of Minnesota, the said company should be entitled to take from any public lands of the United States, within thirty (30) miles of the west line of said road, such an amount of lands as should make up such deficiency, provided only that such lands so taken should be in alternate odd numbered sections.

By an act of the Legislature of the State of Minnesota, approved February 23, 1865 (Sp. Laws of Minnesota for 1865, Chap. 2), the State of Minnesota accepted the said Act of Congress of 1864, and the grants of land thereby made, and further in execution of the trust imposed upon the State of Minnesota by Congress, by said act of the Legislature of the State of Minnesota, the lands granted by Congress were by said State of Minnesota granted and transferred to and vested in the Lake Superior and Mississippi Railroad Company, its successors and assigns, to aid in the construction of its line of road, and said lands are now owned by the St. Paul and Duluth Railroad Company as the successor in interest of said Lake Superior and Mississippi Railroad Company.

Section 1 of that act provided that the lands granted to the State of Minnesota "to aid in the " construction of the Railroad from St. Paul " to Lake Superior " were accepted, " and the same " are hereby granted, vested in, and transferred to " the Lake Superior and Mississippi Railroad Com-
" pany, its successors and assigns, to be held, used or " sold and disposed of by said railroad company, to " aid in the construction of a railroad, as contemplated

" and provided by said act of Congress, and for the " equipment and operation of the same, and for no " other purpose whatever; the same to be held, used, " and disposed of upon and subject to the conditions in " said Act of Congres provided, and upon the conditions " in this act contained. That in consideration of the " lands granted by this act, and of the lands, rights, " privileges and franchises which have heretofore been " granted to said railroad company, the said company " shall, on or before the first day of March of each and " every year *after said railroad is completed and in " operation*, pay into the treasury of the State three " per cent. on the gross earnings of said railroad, which " sum shall be in lieu and in full of all taxation and " assessment upon the said railroad, its appurtenances " and appendages, and all other property of said " company, real, personal and mixed, including the " lands hereby and heretofore granted to said com- " pany, or so intended to be granted. Provided, how- " ever, that the lands hereby and heretofore granted " to said company shall be subject like lands of indi- " viduals, to be taxed as fast as the same are sold or " conveyed, or contracted to be sold, or are leased by " said company, or the stumpage upon any lands is " sold or contracted to be sold by said company; but " no mortgage or trust deed executed by said com- " pany upon said lands, shall, for the purpose of taxa- " tion, be construed as such sale, conveyance, lease or " contract of sale."

The statute then provided that an accurate account of the earnings should be kept by the company, a verified abstract of which should be furnished to the Treasury of the State, in each year, with full power in the Governor of the State or any other person appointed by law to examine the books and the officers and employees of the company.

" And for securing to the State the payment of the " aforesaid per centum, it is hereby declared that the " State shall have a lien upon the railroad of said

" Company and upon all other property of said " Company, real, personal and mixed, and the lien " hereby secured to the State shall take and have " precedence of all demands, decrees and judgments " against said company. Provided, further, that said " Railroad lands shall be taxed as other lands in the " State in five years after the said Company shall be- " come entitled to said lands."

Section 2 of the act provided for patents to the road of the swamp land granted by the Act of 1861 and of the Congressional lands as earned by the construction of sections of the road.

Section 3 provided the periods of time for construction.

Section 4 provided for the deposit by the railroad company of twenty thousand dollars, to be withdrawn when the road was completed.

Section 5 provided for the execution of bonds and mortgages by the company.

Section 6 permitted the company to patent its swamp lands as soon as earned, to be held under Section 2 of the act.

Section 7 provided for the exchange of cars with connecting roads, and repealed Section 12 of the Act of March 8th, 1861.

Section 8 permitted the construction of telegraph lines and charges for the messages sent thereon.

Section 9 related to directors of the company, their number and qualifications and place of meeting

This statute, materially affecting and amending the charter of the company contained in the Act of March 8th, 1861, and subsequent acts was, itself, amended and modified by Chapter 8, Special Laws of 1865, approved March 3d, 1865, in particulars affecting the taxation of the property of the company. The first section contained a careful provision for the taxation of the lands after contract for sale or lease, so as to reach for assessment and taxation the interest of the vendee and lessee, and for sale of such

interest, in the event of nonpayment of the tax without affecting the title of the company. It further increased the burdens of the company as to taxation, by providing that in place of the gross earning tax commencing only upon the completion of the road, according to the terms of the act of February 23, 1865, there should be paid during the first three years after thirty miles of railroad had been completed and were in operation, one per cent. upon the gross earnings, and two per cent. thereafter for the next seven years, and thereafter the tax thereon of three per cent. should be paid to the State of Minnesota.

Section 1 of the Act of March 3d, 1865, being Chapter 8 of the Special Laws for 1865, provided as follows:

"I. That whenever any lands heretofore or hereafter "granted to the Lake Superior & Mississippi Railroad "Company to aid in the construction or completion of "its road or branches, shall be contracted to be sold, "conveyed or leased by said Company, the same shall "be placed upon the tax list by the proper officer for "taxation as other real estate, for the year succeeding "that in which such contract for a sale, conveyance or "lease thereof shall have been made, but in enforcing "a collection of the taxes thereon, the title or interest "of the said Company or of any trustee or mortgagee "thereof shall be in nowise impaired or affected "thereby, but the improvements thereon and all the "interest of the purchaser or lessee therein, may and "shall, in case of default in the payment of taxes upon "such land, be sold to satisfy the same, and it shall be "the duty of the proper officers to assess and collect "such taxes in accordance with the general laws relating to the assessment and collection of taxes, and "that the provisions of the several Acts in relation to the taxation of the lands of said Company, so far as the mode of taxing such lands conflict with the provisions of this act, shall "be and they are repealed. Provided, that "said company shall, during the first three years

" after thirty miles of said railroad shall be " completed and in operation, on or before the first " day of March in each and every year, *pay into the* " *Treasury of the State one per cent. on the gross* " *earnings of said railroad*, the first payment to be " made on the first day of March next after thirty " miles of the said railroad shall be completed and in " operation, and shall, during the seven years next en- " suing, after the expiration of the three years afore- " said, pay into the Treasury of this State, on or be- " fore the first day of March of each and every year, " *two per cent. of the gross earnings of said railroad*, " and shall, from and after the expiration of said seven " years, on or before the first day of March of each " and every year, *pay into the Treasury of this State* " *three per cent. of the gross earnings* of said railroad, " *and the payment of such per centum annually, as* " *aforesaid, shall be and is in full of all taxation and as-* " *sessment whatever.*"

Then follow provisions for the account of earnings to be kept by the company, the abstract to be furnished to the Treasurer of the State annually and power of examination by the officers of the State, and for the lien upon the railroad of the company in favor of the State.

" SECTION 2. That upon the filing by said company " in the office of the Secretary of State of a notifica- " tion of its acceptance of this act the same shall " become *obligatory upon the State* and upon said " company, provided that said notification shall be " given within sixty days."

Acceptance was duly made by the Lake Superior and Mississippi Railroad Company of both Acts, chapters 2 and 8, of 1865, and thereafter the railroad was built on the faith of the contract thus made with the State, and the provisions of the Acts have been continuously and fully complied with by the railroad company and its successor company (fols. 15, 29, 58 and 60 of Record, and admissions of defendant in error at the trial, fol. 949, Record).

Chapter 168 of the Laws of 1895 undertakes to repeal the provisions of this act, as well as other similar acts, for commuted taxation of the land grant lands, thus leaving the railroad company under the burden of the gross earnings tax, and imposing upon it the additional burden of having its land grant lands taxed "as other lands are taxed in this State."

The defendant in error contended in the Court below, and the Court allowed the contentions that Chapter 168, General Laws of Minnesota, 1895, was legally passed by the Legislature; that Chapters 2 and 8 of the Special Laws of 1865 of Minnesota, under which the St. Paul and Duluth Railroad Company paid a tax of three per cent. of its gross earnings in lieu of all other taxes, were invalid, because in violation of Sections 1 and 3, Article IX. of the Constitution of Minnesota, and consequently that Chapter 168 General Laws of Minnesota 1895, directing that all lands owned by railroads should be taxed as other lands were taxed in that State was valid and operative and not in violation of any contract which otherwise would have been created by the said Chapters 2 and 8 of the General Laws of 1865.

The plaintiff in error claims that Chapters 2 and 8 of the General Laws of 1865 clearly created a contract which the acceptance, filed by the predecessor of the plaintiff in error and the construction of the road in reliance thereon (R., p. 6), made mutually binding upon the State and the plaintiff in error, that said statutory contract was not in violation of Sections 1 and 3 of Article IX. of the State Constitution, and that consequently Chapter 168 of General Laws of 1895 constituted a breach of the said statutory contract and was a direct of violation of Article I., Section 10 of the Constitution of the United States, and further, that Chapters 2 and 8 of Laws of 1865 were ratified and confirmed by an amendment to the Constitution of Minnesota, in the year 1871.

No question was argued or even raised in the Court

below with respect to the right of the St. Paul and Duluth Railroad Company as the successor of the Lake Superior and Mississippi Railroad Company to enjoy the benefits of Chapters 2 and 8 of the Laws of 1865, or with respect to its obligations to perform all the requirements thereof.

Assignments of Error.

The following assignments of error are made relative to the St. Paul and Duluth Railroad Company:

1.

The Supreme Court of the State of Minnesota erred in holding that a certain law of the State of Minnesota, being Chapter 168 of the General Laws of Minnesota of the year 1895, was constitutional and valid.

2.

The Supreme Court of the State of Minnesota erred in deciding that the said Chapter 168 of the General Laws of the State of Minnesota for the year 1895, repealed and amended Chapter 8 of the Special Laws of the State of Minnesota for the year 1865, and did not violate the obligation of a contract contrary to the Constitution of the United States.

3.

* * * * * *

4.

The Supreme Court of Minnesota erred in deciding that Chapter 8 of the Special Laws of the State of Minnesota of the year 1865 is not a valid contract binding upon the said State.

5.

* * * * * *

6.

The Supreme Court of the State of Minnesota erred in deciding that Chapter 8 of the Special Laws of Minnesota of the year 1865, ratified and validated by the amendment to the Constitution of the State of Minnesota of the year 1871, is not a contract binding upon the State, and can be amended or repealed without violating the obligation of a contract.

7.

* * * * * *

The case involves the construction of the following statutes and constitutional provisions of the State of Minnesota:

1. Chapters 2 and 8 of the Laws of 1865, with respect to the claim of plaintiff in error, that their terms create a contranct between the State and the railroad company.

2. Sections 1 and 3 of Article IX. of the State Constitution with respect:

(a) To the claim of plaintiff in error that the land-grant lands of the railroad company are not subject to the operation of their provisions, and

(b) To the claim of plaintiff in error that a system of commutation of taxation of a railroad company by substituting a gross-earnings tax for an *ad-valorem* tax is not a violation of their provisions.

3. The amendments of November 8th, 1871, Section 32 of Article IV. of the Constitution of Minnesota, with respect:

(a) To the claim of plaintiff in error that it ratified the contract contained in Chapters 2 and 8 of the Laws of 1865, and

(b) To the claim of defendant in error that such ratification was conditioned upon the right of the Legislature without the consent of the railroad company to amend or repeal Chapters 2 and 8.

POINTS.

I.

This Court is not bound by the construction placed by the Supreme Court of Minnesota upon the Constitution and statutes of that State.

II.

The construction placed by the Supreme Court of Minnesota upon the Constitution of that State is incorrect. There is nothing in the Constitution of Minnesota, properly construed, which makes invalid the legislation providing for a tax upon the gross earnings of the St. Paul and Duluth Railroad or its predecessor in lieu of direct taxation of its lands.

III.

The grants made by the State to the predecessors of the St. Paul and Duluth Railroad Company, and the provisions of the statutes with regard to the commuted taxation of the lands so granted, by means of the gross earnings tax, constitute a contract between the State and the railroad company within the provision of the Federal Constitution.

IV.

The land grant lands of the St. Paul and Duluth Railroad Company are not subject to the operation of Sections 1 and 3 of Article IX., of the Constitution of the State of Minnesota.

V.

The provisions of chapters 2 and 8 of Laws of 1865, relative to the gross earnings tax in lieu of all other taxation of the property of the railroad company were ratified and confirmed by the amendment to the Constitution of 1871, and said amendment did not confer upon the Legislature the right to amend or repeal those statutes without the consent of the railroad company.

VI.

Chapter 168 of the Laws of the State of Minnesota, of 1895, impairs the obligation of the contract and is void under the provision of the Federal Constitution.

FIRST POINT.

This Court is not bound by the construction placed by the Supreme Court of Minnesota upon the Constitution and Statutes of that State.

This cause comes before this Court upon a writ of error brought to review the decision of the highest Court of the State of Minnesota, on the ground that that Court has upheld a statute of that

State which plaintiff in error claimed to be a statute impairing the obligation of a contract of the State of Minnesota, and, therefore, to be void within the provision of the Federal Constitution prohibiting any State from impairing the obligation of a contract. The contract which plaintiff in error relies on is contained in certain statutes of the State of Minnesota. The Supreme Court of Minnesota has held by its decision in this suit that those statutes were void under certain provisions of the Minnesota constitution, and that there was consequently no contract in existence. That Court also intimates, but does not decide, that these statutes by their terms, properly construed, do not create a contract (fol. 69 of Record). Of course, if this Court is bound by the construction placed by the Supreme Court of Minnesota in this suit upon the Constitution of the State, there is an end of all discussion here. Such, however, is not the rule in this class of cases. If it were the rule, the power of this Court to enforce the provision of the United States Constitution in question would be practically nullified. The rule adopted in this Court is well settled. This Court will inquire, first, whether there was a contract, and, secondly, whether it has been impaired by the legislation of the State. If the contract is claimed to have been a contract contained in legislation, this Court will inquire for itself whether such legislation did create a contract and whether such legislation is valid, and the decision of the State Court on either of these questions will be reviewed on its merits.

On a writ of error to review a judgment of the highest Court of a State, giving effect to a statute of the State, drawn in question as affecting the obligation of a previous contract, the United States Supreme Court,

" exercising its paramount authority of determining
" whether the statute upheld by the State Court did
" impair the obligation of the previous contract, *is not*

" *concluded by the opinion of the State Court as to the* " *validity* or the construction *of the contract, even if* " *contained in a statute of the State,* but determines for " itself what that contract was."

N. O. Waterworks vs. La. Sugar Co., 125 U. S., 36, and cases cited.

" When the State Court upholds the subsequent " law, on the ground that the contract did not confer " the right claimed, this Court may inquire whether " the supposed contract did give the right, because, if " it did, the subsequent law cannot be upheld."

125 U. S., 38.

" A statute of Illinois, passed in 1855, declares that " all the property of the Northwestern University " shall be forever free from taxation. As construed " by the assessors and by the Supreme Court of the " State, a statute of 1872, conforming taxation to the " new constitution of 1870, limited this exemption to " land and other property in immediate use by the in- " stitution. *Held,* 1. That the latter statute impaired " the obligation of the contract of exemption found in " the statute of 1855. 2. *That whether the statute of* " *1855* is a valid contract, or *is void by reason of its* " *conflicting with the State constitution of 1848, under* " *which it was made, is a question on which the judg-* " *ment of that Court can be reviewed here.*"

University vs. People, 99 U. S., 309.

See opinion of Mr. Justice MILLER at pp. 319, 321, 323.

The case of *Mobile & Ohio Railroad Company vs. Tennessee,* 153 U. S., 486, is almost identical with the case at bar. In that case the Supreme Court of Tennessee had decided that the provision in the 11th section of the Tennessee charter of the Mobile and Ohio Railroad Company, that no tax shall ever be laid on said road or its fixtures which shall reduce the dividends below

eight per cent., was null and void under the Constitution of the State of 1834, which was in force at the time of the granting of the charter, and that subsequent legislation imposing taxes upon the company did not violate or impair the obligation of any contract with the railroad company. This Court held that it had jurisdiction to revise the judgment of the Supreme Court of Tennessee, and to consider the question of the construction of the Constitution of Tennessee of 1834, and this Court overruled the decision of the Supreme Court of Tennessee in this particular, and held that under the Constitution of 1834 the Legislature of Tennessee had power to grant to the railroad company the exemption from taxation contained in the 11th section of the act of incorporation. The decision of the Court is thus summed up:

"It is well settled that the decision of a State "Court holding that as a matter of construction a "particular charter or a charter provision does not "constitute a contract is not binding on this Court. "The question of the existence or non-existence of a "contract in cases like the present is one which this "Court will determine for itself, the established rule "being that, where the judgment of the highest Court of "a State by its terms or necessary operation gives "effect to some provision of the State law which is "claimed by the unsuccessful party to impair the con- "tract set out and relied on, this Court has jurisdiction "to determine the question whether such a contract "exists as claimed, and whether the State law com- "plained of impairs its obligation."

See, also, to the same effect:

Jefferson Branch Bank vs. Skelly, 1 Black, 436.

See language of Mr. Justice WAYNE at p. 443.

Douglass vs. Kentucky, 168 U. S., 488, 503.

Chicago, etc., Railroad vs. Nebraska, 170 U. S., 57, 68.

SECOND POINT.

The construction placed by the Supreme Court of Minnesota upon the Constitution of that State is incorrect.

The Supreme Court of the State held that the statutes on which we rely were in violation of Article IX., Sections 1 and 3 of the State Constitution, reading as follows:

"SECTION 1. All taxes to be raised in this State shall "be as nearly equal as may be, and all property on "which taxes are to be levied shall have a cash valua- "tion, and be equalized and uniform throughout the "State: * * *

"SECTION 3. Laws shall be passed taxing all moneys, "credits, investments in bonds, stocks, joint stock "companies or otherwise, and also all real and per- "sonal property according to its true value in "money;" * * *

The Court held that an irrevocable contract, providing for a fixed rate of taxation on the gross earnings of the railroad in lieu of a tax upon its lands, was in violation of these provisions of the Constitution and void. This we claim to be error. No previous decision to this effect had ever been made by the Supreme Court of Minnesota. The decisions and the *dicta* of the Supreme Court cases had all been the other way. Long continued practice and settled usage had sanctioned commuted taxation such as that involved in this suit. The People of the State had acquiesced in and the Courts of the State had expressly or impliedly approved such legislation. The current of authority in other States in construing similar provisions of other State Constitutions is adverse to the opinion expressed in this suit by the Supreme Court of Minnesota. The decisions of this Court are adverse to the conclusion arrived at in this suit by the Supreme Court of Minnesota.

It is to be borne in mind that we are not dealing with a Constitution of recent date, but with the Constitution of the State of Minnesota adopted at the time of the admission of that State into the Union in 1858. The long-settled practical construction placed upon that Constitution by the Legislature of the State and acquiesced in by the People and by the Courts has been for the first time overruled by the decision of the Supreme Court of the State in the case at bar in the year 1898, forty years after the adoption of the Constitution. The system of commuted taxation for railroads and for land grants connected with railroads has been enforced during that entire period. Under these circumstances every presumption is in favor of the validity and constitutionality of the legislation in question.

Constitutions will be interpreted in the light of history and of the policy of the law before and since the time of their adoption, to ascertain the meaning of the terms employed.

As will be seen hereafter, the practice of the Territory of Minnesota was universal, up to the time of the adoption of its State Constitution, to provide for the taxation of all the real and personal property of its railroad companies by a commuted system of taxation of gross earnings.

It is a fair inference that the Constitution of the State adopted in 1858 was not intended to render this method of taxation unconstitutional.

The case of Commissioners of Rice Co. vs. Citizens' National Bank, 23 Minn., 280, is a direct authority for the proposition that, under the clauses of the Constitution quoted above, real property may be taxed otherwise than *eo nomine* at its cash value.

This was a case where a bank existing under the National Banking Law was taxed under a Minnesota law upon its capital stock. It was conceded that the provisions of that statute required the assessment and taxation of all the shares comprising the entire capital

stock of the association in the name of the respective shareholders, and at their actual cash value.

It was decided by the Court that the property and interest of the bank in its real property, consisting of its bank building, was taxed under Sections 1 and 3 of Article IX. of the State Constitution, in the assessment of the shares of the capital stock of the bank under the Minnesota statute, and could not be assessed and taxed *co nomine* as real property by the county.

Our contention as to the power of the Legislature of Minnesota under the Constitution we rest upon the principles stated below :

On page 281 :

"The general policy of the law is to avoid duplicate "taxation. No one subject of taxation ought to be "required to contribute more than once to the same "public burden, while other subjects of taxation, "belonging to the same class, are required to contrib- "ute but once. In the exposition of any tax law, "therefore, a construction leading to any such result "should be avoided unless the cogency of some express "provision or unavoidable implication of the statute "compels its adoption.' Says Judge Cooley in his "valuable treatise on the law of taxation: 'It is a "'fundamental maxim in taxation that the same "'property shall not be subject to a double tax pay- "'able by the same party, either directly or indirectly ; "'and, when it is once decided that any kind or class "'of property is liable to be taxed under one provision "'of the statute, it has been held to follow as a legal "'conclusion that the legislature could not have in- "'tended the same property should be subject to "'another tax, though there may be general words in "'the law which would seem to imply that it may be "'taxed a second time.' Cooley on Taxation, 165, "and authorities cited in the notes. Especially should "this rule obtain in the courts of a state whose consti- "tution contains an express provision requiring "equality and uniformity in the imposition of taxes "upon property, according to a cash valuation."

On page 288 :

" * * * Inasmuch, however, as the agencies " created and established by the federal government, " to assist in the execution of its powers, are exempt " from state taxation save as allowed by Congress, the " state can only exercise its taxing powers over the " national banks and the capital they employ and rep- " resent in the manner and to the extent permitted " by congressional authority. Under this authority it " is permitted to the state to tax the real property of " the banks as such, and also all the shares of stock " as personal property belonging to the shareholders, " provided the rate of valuation and assessment of the " latter is no greater than is assessed upon other " moneyed capital in the hands of individuals. Within " the limits of this authority, the state may fully exer- " cise its taxing powers, in strict obedience, however, " to the requirements of its own constitution.

" As equality in taxation is the constitutional policy " of this state, no scheme of taxation can be presumed " to have been intended by the legislature which neces- " sarily involves, in its practical results, the imposition " of a greater proportionate share of its burdens upon " moneyed capital invested in the business of banking " under national laws than is imposed upon capital " similarly employed under state authority. The law " under consideration provides for the assessment of " the real property of the state banks *eo nomine*, but " does not authorize its assessment in any other form. " Capital thus invested is, therefore, subject to taxation " but once for any one object. If a like mode of assess- " ment had been intended in respect to the real prop- " erty of the national banks, it must be presumed that " some provision would have been made for deducting " the value of such property from the total value of the " shares, in order to fix upon a correct valuation of the " latter for the purpose of taxation. The omission of " any such provision was manifestly intentional, as the " shares are required to be assessed at their true and

"full value without any deduction whatever; and in "this way the real property belonging to these associa- "tions is always subjected to its proper share of "taxation."

In the territorial times when the country was new and undeveloped, an almost universal rule prevailed in the Territories that railroads paid a per centum taxation of the gross earnings in lieu of other taxation. It was the settled policy of the land. It was the policy not only in the old grants made before the State Constitutions, but in the new ones made by the States and by Congress after the adoption of the State Constitutions.

The idea that this commuted form of taxation was an exemption did not grow up in the State of Minnesota until forty years later.

Section 1 of Article IX. was enacted for the purpose of precluding that any legislative exemption or immunity should be granted to any citizen or body corporate. That all should contribute a proportionately fair share to sustain the State based upon the value of their property was understood, and that this is the true interpretation is verified by the third section of Article IX., which leaves the Legislature to formulate the manner in which these taxes shall be levied and the value of the property ascertained, and that thisis to be the guide in ascertaining what the true proportion of the tax to be borne should be. It was intended that no law should be passed giving to a corporation an immunity or exemption from taxation in proportion to the value of the property, but it was left to the Legislature to fix the manner of assessment and the method of ascertaining the value. The Legislature did this in the case of the St. Paul and Duluth Railroad Company by passing the Acts of February 23d and March 3d, 1865.

The direction contained in Section 3 of Article IX. of the Constitution that the Legislature should pass laws taxing all property did not establish a limitation

as to the means by which the Legislature might equalize any tax. The power of the Legislature is plenary.

There were many exemptions then, and it was to provide against legislative exemptions and not to prescribe the manner in which this tax was to be proportioned that this section was passed.

Curryer vs. Merril, 25 Minn., 1.

"Plenary legislative power is therefore the rule, "while the want of it is the exception; as a conse- "quence, it logically follows that every statute passed "by the state legislature is presumably valid, and the "presumption is conclusive unless it affirmatively ap- "pears to be in conflict with some provision of the "federal or state constitution; and in order to justify "the Court in pronouncing it invalid, because of its "violation of some clause of the state constitution, its "repugnancy thereto must be so clear, plain and pal- "pable as to leave no reasonable doubt or hesitation "upon the judicial minds."

Ames vs. Lake Superior & Mississippi Ry. Co., 21 Minn., 241.

It will be noticed the Supreme Court of Minnesota, as shown in the cases hereafter cited, has repeatedly declared that the commuted system when adopted was a just and reasonable commutation, and the tax paid under that system was the just proportion of tax due from the company authorized and doing business by and under the act.

It is also to be borne in mind that this is *not* a case of *exemption* of property from taxation, but of a *substituted method of taxation*. We do not, therefore, need to rely upon those cases, which are numerous, construing the constitutional provisions of other States (such, for instance, as the Constitution of Tennessee of 1834) which hold that, notwithstanding the constitutional mandate that taxes shall be equal and uniform and that property shall be taxed according to its value, the

Legislature can, nevertheless, in its discretion, entirely exempt the property of particular corporations or particular classes of corporations or particular kinds and classes of property. We shall recur to those cases later on in discussing the general subject of constitutional requirements as to taxation. We desire, however, *in limine*, to differentiate the question in the case at bar from that presented in these cases. The railroads whose property is affected by the decision in this case are not claiming an exemption from taxation. They are only claiming the benefit of the contract between them and the State guaranteeing them a commuted system of taxation based upon a percentage of the earnings of the railroad as distinguished from a direct tax upon the property itself.

This distinction has been sustained not only by the Supreme Court of Minnesota, but by this Court. It has also been held that, for the purpose of such commuted taxation, lands granted in aid of construction of a railroad are properly considered a part of the railroad system and entitled to the commuted method of taxation, although lands purchased or otherwise acquired by the company are not so entitled, unless actually used for railroad purposes.

In *McHenry vs. Alford*, 168 U. S., 651, it appeared that an act of the Territory of Dakota, passed in 1883, provided for the taxation of the lands of the Northern Pacific Railroad Company granted to it by Congress, outside of its right of way and not used by it in its business, while owned by the company and not leased, through the payment of percentages on gross earnings, as provided for therein. It was held that the plain meaning of that act was to render the railroad company and all its property—land grants as well as right of way—free from the payment of all taxes, excepting to the amount, and in the manner, described in the act.

It was further held that this Territorial act was not in conflict with the provisions of the Act of Congress of

March 2, 1861, organizing the Territory and providing that no law should be passed "impairing the rights of "private property; nor shall any discrimination be "made in taxing different kinds of property; but all "property subject to taxation shall be in proportion "to the value of the property taxed."

The Court further held that the Act of 1883 was not an act *exempting* the lands of the company from taxation, but merely substituting one method of taxation for another upon the terms and conditions specified.

Mr. Justice PECKHAM says at page 662:

"The principle that exemption from taxation must "be clearly shown and that it generally applies (if at "all) only to property used in the business of the com- "pany claiming exemption, is acknowledged and as- "sented to. The case of *Ford vs. Delta & Pine Land* "*Company*, 164 U. S., 662, is an illustration of the "principle, but it does not here apply. The language "of this act is clear and absolute. It is also not the case "of an exemption from taxation, but the substitution "of one method for another. The land here in ques- "tion is, in addition, closely connected with the busi- "ness of the company. We shall show this more at "length hereafter."

It was urged by counsel that the land included in the land grants was "simply 'property owned by a "'railroad' and not 'railroad property,'" and that it should be taxed in like manner as the land of individuals and not as part of the railroad system. The Court, however, held otherwise (see opinion of PECKHAM, J., at pp. 665 to 669).

Mr. Justice PECKHAM says at page 667:

"Unquestionably these lands have indirectly con- "tributed to the gross earnings derived from operat- "ing the road and that such earnings have arisen and "been made possible by reason of the lands. They "have not only aided in making these gross earnings "possible, but they have formed and do still form a "material factor in the combination of circumstances

" contributing to the construction of the railroad, to " its operation and to its earnings."

In *County of Ramsey vs. C., M. & St. P. Ry. Co.*, 33 Minn., 537, the Court in effect upholds the constitutionality of an act of 1873, whereby it was provided that any railroad company accepting and becoming subject to the provisions of that act should annually pay into the Treasury of the State a defined percentage of its gross earnings. By this act it is declared that, in consideration of the annual payment thereby provided for, " the railroad, its appurtenances and " appendages, and all other property, estate and effects " of said corporation, held or used for, in or about the " construction, equipment, renewal, repair, maintaining " or operating its railroad, *including* the lands granted " to said company to *aid in the construction* of said " railroad, as also the stock and capital of said com- " pany, shall be, and hereby are, forever exempt from " all taxation and from all assessments."

The Court say, at page 540:

" The corporation having accepted and become sub- " ject to the provisions of this act, its rights, as well as " those of the State, are to be determined by it."

And, again (at p. 542): " It is a general policy of " State that all property within the State, excepting " certain defined classes, of which public burying " grounds, school houses, hospitals and churches are " examples, shall bear its proper proportions of the " common burden of taxation. Many reasons doubt- " less conduced to the adoption of the provision to " which we have referred, relating to the taxation of " railroads. It is not, however, to be supposed that " this plan was adopted for the purpose of relieving " corporations or their property from their due share " of this common burden. It was not in reality a plan " for *exempting* property from taxation, but a substi- " tuted *method* of taxation. It must be supposed that " it was contemplated that this system would, upon " the whole, fairly effect the objects of taxation with

" respect to such corporations, and be equivalent in its " results to taxation of the property owned by them."

The statute in question fixed a permanent rate of three per cent. of gross earnings in lieu of all other taxation. This the Court in effect holds to be constitutional. The Court, however, holds that land not used for railroad purposes is not within the statute and is taxable.

The Court (at p. 546) distinguishes between lands purchased and acquired by the railroad company and " lands granted to railroad corporations to aid in the " construction of their lines of road," which latter are within the statutory commutation, while the former are not, unless used for railroad purposes.

Precisely similar rulings are made in

County of Stevens vs. St. P., M. & M. Ry. Co., 36 Minn., 467.
County of Todd vs. St. P., M. & M. Ry. Co., 38 Minn., 163 and
City of St. Paul vs. St. P., M. & M. Ry. Co., 39 Minn., 112,

in which cases almost the same language is used as to this "substituted method of taxation," and as to the percentage of earnings being "equivalent in its results to taxation of the property" of the company.

A fixed percentage of earnings was provided by the statute under consideration in these cases.

It is true that the charter rights of the St. P., M. & M. Ry. Co. antedated the Constitution of the State, but this is not true of the rights claimed by the C. M. & St. P. Ry. Co. under the Act of 1873 considered in the *County of Ramsey* case, 33 Minn., *supra*.

No reference is made by the Court in this case in 33 Minn. to the Constitutional Amendment of 1871, as supporting the Act of 1873.

No serious question seems to have been made by the courts of Minnesota as to the constitutionality of the various Acts of the Legislature providing for commuted taxation of railroads and other corporations until the case of the *State vs. Luther*, 56 Minn., 156, which was de-

cided in 1894. In the meantime, in the year 1871, the People had adopted a constitutional amendment, Section 32*a*, which provided as follows:

"Any law providing for the repeal or amendment of "any law or laws heretofore or hereafter enacted, "which provides that any railroad company now exist- "ing in this state or operating its road therein or which "may be hereafter organized, shall, in lieu of all other "taxes and assessments upon their real estate, roads, "rolling-stock, and other personal property at and "during the times and periods therein specified, pay "into the Treasury of this State a certain percentage "therein mentioned of the gross earnings of such Rail- "road Company now existing or hereafter organized, "shall, before the same shall take effect and be en- "forced, be submitted to a vote of the People of the "State and be adopted and ratified by a majority "of the electors of the State voting at the election at "which the same shall be submitted to them."

The question presented by the appeal was whether the "granted lands" of the St. Paul and Duluth (formerly Lake Superior and Mississippi) Railway Company are subject to be listed and taxed as other lands in the State. The Court held that under the provisions of Special Laws, 1865, Chapter 8, such lands, until sold, contracted to be sold or leased, were to be entirely exempt from taxation in the ordinary way.

The Court also held as "perfectly clear" that:

"*The Legislature intended that the granted lands* "*should remain exempt from ordinary taxation as long* "*as they continued to belong exclusively to the Company.*"

The Court further says at page 160:

"Neither is the question whether there is a grant "of immunity from taxation, but whether a commuted "system or mode of taxation has been provided. It is "a common error in construing statutes like the pres- "ent to assume that because a commuted tax is fixed "with reference to and is wholly derived from the "gross earnings of the road, therefore, the lands are

" exempt from taxation altogether. The percentage " of the gross earnings is paid as taxes on both the " railroad and the granted lands, and although derived " wholly from the former, is a commutation tax alike " on both."

It was urged that the words "shall be and is in full " of all taxation and assessment whatever" related only to "railroad property" and not to "granted lands." The Court, however, overruled this contention and held that the meaning of the act was "by necessary impli- " cation that granted lands shall not be subject to " ordinary taxation until contracted to be sold or leased " and then only to the extent of the interest of the pur- " chaser or lessee. * * * The decisions of this " Court cited by counsel on this point lend him no " support, for in those cases the property held liable " to ordinary taxation was neither granted lands nor " property devoted to railroad uses, and in every one " of those cases the statute construed extended, in " accordance with the uniform legislative policy, the " commuted system of taxation to granted lands as well " as to railroad property.

> " County of Ramsey vs. Chicago, M. & St. " Paul Ry. Co., 33 Minn., 537 (24 N. W., " 313).
>
> " County of Todd vs. St. P., M. & M. Ry. " Co., 38 Minn., 163 (36 N. W., 109).
>
> " State vs. Northern Pac. R. Co., 39 Minn., " 25 (38 N. W., 635).

" *Our conclusion is, that* under the provisions of " Sp. Laws of 1865, Chapter 8, *these lands are not* " *subject to taxation in the ordinary way in which other* " *lands in the State are taxable.*

" In the light of experience it is probably very un- " fortunate that the legislature, in dealing with the " various land-grant railway companies, did not im- " pose some reasonable limitation as to the time dur- " ing which this immunity of the granted lands from " ordinary taxation should continue. But, if the state

" made injudicious contracts, the mistake is remedi-
" less now."

The Court then took up the contention of counsel for the relator that the provisions of the acts in question were unconstitutional so far as they exempted the granted lands from taxation like other lands in the State, and the Court says at page 162:

" There is nothing in the suggestion that such laws
" may be held valid as to the taxation of property
" devoted to railroad purposes, but void as to the tax-
" ation of the granted lands. The provisions of the
" laws as to taxation must be all valid, or all void, and
" for two reasons: First, the percentage of the gross
" earnings of the road is a tax on both the road and
" the lands, and not the road alone; and, second, the
" vice, if there be one, in the commuted system of tax-
" ation, would apply to the one class of property as
" well as the other. If there is anything in counsel's
" point both classes of property must, under the con-
" stitution, be taxed according to its true value in
" money."

The Court thus plants itself squarely upon the position taken in the previous cases in the Supreme Court of Minnesota and in the subsequent case of *McHenry vs. Alford*, in 168 U. S. *(supra)*, to the effect that lands granted in aid of the construction of the railroad are taxable as part of the railroad system and that the tax must be valid as a whole or void as a whole.

The Court then proceeds to point out the far-reaching consequences of the attack made upon the constitutionality of this method of taxation of railroad property, and declines to pass upon the question, holding that whether originally valid or not the legislation providing for such method of taxation was validated by the Constitutional Amendment of 1871.

The Court says upon this subject at page 162:

" The question is one that affects the whole tax
" system of the State. If all such laws are invalid
" the consequences would be most serious, affecting the

" taxation, not only of railroads, but also of mining, " insurance, telegraph, telephone and express com- " panies and the like, most if not all of which have " been taxed for years on the basis of their receipts or " earnings. We do not care to pass upon or consider " a question of such great importance until it is neces- " sary, and we do not think that the question arises " in this case. Conceding without deciding that tax " laws such as we are now considering were invalid " when enacted, still we are of opinion that the effect " of the constitutional amendment of 1871 (article 4, " Sec. 32*a*) was to validate all such laws relating to " the taxation of railway property. To a proper un- " derstanding of the meaning and scope of this amend- " ment it is necessary to consider it in the light of the " previous legislative policy of the State on the sub- " ject. The system of providing for the payment of a " percentage of the gross earnings of the road in lieu " of all other taxes on 'railroad property,' and on the " lands granted to aid in its construction while owned " by the company, was inaugurated by the territorial " legislatures, and was universally in vogue at the date " of the adoption of the constitution.

" And after that date the state legislatures invaria- " bly assumed that they continued to posses the power " to adopt this system of commuted taxation when " granting lands to aid in the construction of a rail- " road, whether such lands were the absolute property " of the state, or were held by it in trust for that pur- " pose under an act of congress. This was the prac- " tice, not only as to old grants made before the adop- " tion of the constitution, but also as to new grants, " both state and congressional, made after that date.

" Among the congressional grants made subsequently " to the adoption of the constitution, to aid in the con- " struction of railroads in this state, are the act of " March 3, 1865 (13 U. S. Stat., p. 526), increasing the " grant of 1857, to ten sections per mile ; the act of " May 5, 1864 (13 U. S. Stat., p. 64), making a grant to

" aid in the construction of a road from St. Paul to " Lake Superior ; the act of May 12, 1864 (13 U. S. " Stat., ch. 84, Sec. 7, p. 74), granting four additional " sections a mile to aid the construction of a road from " St. Paul and St. Anthony to the southern line of the " state ; the act of July 4, 1866 (14 U. S. Stat., p. 87), " making a grant to aid in the construction of what is " called the Hastings & Dakota Railroad ; the act of " July 2, 1864 (13 U. S. Stat.,, p. 365), making a grant " directly to the Northern Pacific Company to aid in " the construction of its road.

" Among the grants made by the state itself for like " purposes were that of March 6, 1863 (Sp. Laws, 1863, " ch. 4), of swamp lands to the St. Paul & Pacific " Company to aid the construction of a road from St. " Paul to Winona ; the act of February 16, 1865 (Sp. " Laws, 1865, ch. 1), granting swamp lands to aid the " construction of the Southern Minnessota Railroad ; " the act of March 8, 1861 (Sp. Laws, 1861, ch. 1, Sec. " 18), making a grant of swamp lands (to which the " lands here in controversy in part belong) to aid in the " construction of the road from St. Paul to Lake Su- " perior.

" *And in every instance the legislature, in making or* " *transferring the grant to the Railway Company pro-* " *vided for the exemption of the lands from ordinary* " *taxation while owned by the company, in considera-* " *tion of its paying to the state, annually, a certain per-* " *centage of the gross earnings of the road.* They " provided for the same system of taxation for the " Northern Pacific Company, which received its grant " directly from congress (Sp. Laws, 1870, ch. 65, " Sec. 1).

" In brief, the legislature assumed that, when making " a grant of lands to aid the building of a railway, or " in executing the trust where lands had been granted " to the state by congress for the same purpose (and " which, while thus held by the state, either as pro- " prietor or in trust, were, of course, not subject to

" taxation), it had the power, in the furtherance of the " object for which the grant was made, to exempt such " lands from ordinary taxation, and to provide for " commuted taxation of both the railroad and the " granted lands.

" *There is not in the history of the state a single* " *grant of lands to aid the building of a railway where* " *this system of commuted taxation has not been* " *adopted*, and we have not found an instance prior to " the adoption of the constitutional amendment of " 1871 (Const., Art. 4, Sec. 32*a*), where a commuted " system of taxation was provided that did not apply " to a land grant as well as to the railroad property. " *This amounted to a legislative construction of the con-* " *stitution, which of itself would be entitled to great* " *weight.*"

In the first tax law passed after the adoption of the Constitution (Ch. 1, Gen. Laws, 1860), the Legislature in Sec. 2 made a provision by which the taxpayer could offset against the assessments of credits any indebtedness which he might owe. Although this provision would be unconstitutional according to a technical and literal reading of Section 3, Art. IX., *supra*, and had been so decided in Ohio before the adoption by the State of Minnesota of this section (*Exchange Bank of Columbus vs. Hines*, 3 Ohio St., p. 1) it has always remained a feature of the tax laws of the State. It has been in force and universally acted upon for thirty-eight years.

In 1872, amended in 1876, the Legislature passed an act for the taxation of insurance companies by a percentage of premiums in lieu of other taxes on all real and personal property. See Gen. Stat., 1878, Sec. 315, p. 433. Taxation of insurance companies by the same method has prevailed ever since without question.

Thus Minnesota had a system of railroad taxation of forty years' standing, a system of taxation of insurance companies twenty-five years old, the validity of which has passed unquestioned until recently. Not only the

Legislature, but the Governor, the Courts, every branch of the State government, and the people themselves have by this long-continued practical construction treated these acts as valid. A Constitution may acquire a construction or meaning by universal and long-continued practice which should be held controlling. (*Carson vs. Smith*, 5 Minn. (Gil.), 61; *Green vs. Knife Falls Boom Corporation*, 35 Minn., 161, 162; *City of Faribault vs. Misener*, 20 Minn. (Gil.), 352; *Ames vs. Railway Co.*, 21 Minn., 288, 289.)"

Curryer vs. Merrill, 25 Minn., 1:

In the Curryer case the State had entered into a contract with D. D. Merrill to furnish text books; the act provided that the books should be used in all the public schools, except that it should not be obligatory upon boards of education acting under special charters. The question presented was whether the law conflicted with any constitutional provision inhibiting or limiting legislative power upon this subject. The provision of the Constitution considered is found in § 1 of Article 8:

" It shall be the duty of the legislature to establish a " general and uniform system of public Schools."

It was contended that the last clause compelled uniformity of text books, and that the statute under consideration violated this requirement by excepting certain school districts from its operation. The Court say on page 6:

" But the principle of uniformity is not violated if " the system which is adopted is made to have a gen- " eral and uniform application to the entire state, so " that the same grade or class of public schools may " be enjoyed by all localities similarly situated."

" Irrespective of these considerations, however, it is " certain that the imposition of a duty is not a limita- " tion of power."

We have thus shown the condition of the law in the State of Minnesota up to 1894, constituting an un-

broken line of legislative and judicial precedents in favor of the system of commuted taxation covering railroads and land grants.

In 1895 was passed the act which is relied on by the State in this case as repealing the provisions of the Acts of the Legislature under which the St. Paul and Duluth Railroad and the Northern Pacific claim the right to commuted taxation, and in the case at bar the Supreme Court of Minnesota arrives at the startling conclusion that the acts in question, notwithstanding the legislative and judicial precedents of forty years in their favor, were void *ab initio* as violating the Constitution of the State of Minnesota, and that, while validated by the Amendment of 1871, they were, by the terms of that amendment, subject to repeal in the manner therein pointed out.

We submit that the construction placed upon the Constitution of the State for forty years and approved and acted upon by the Legislature and the courts cannot be thus suddenly and ruthlessly upset because the present members of the Supreme Court of Minnesota may think that these precedents were unwisely or injudiciously established.

Certainly this Court will not sanction such a complete revolution in the jurisprudence of the State of Minnesota where it operates to interfere with vested interests and to impair contract obligations. In deciding this cause this Court will take the law of Minnesota as it had been declared prior to the decision in the case at bar. That law was thoroughly settled without a single break or exception.

In *Chicago vs. Sheldon*, 9 Wall., 50, it is *held* that under an ordinance granting to the North Chicago City Railway Co. the right to construct a railway upon certain conditions, the railway company was not liable for curbing, grading and paving the streets, but only for repairs, the Court saying, per NELSON, J., at p. 55 :

" We may add, also, that the learned Judge who de-
" livered the opinion of the Court, maintaining the lia-

" bility of this company to the payment of the assess-
" ment, does not place his opinion upon the ground
" that the contract did not exempt it, but that the
" legislature were disabled by the constitution of the
" State from conferring any such power on the City.
" The objection is founded on the clauses of the con-
" stitution, which provide that taxes shall be levied
" so that each person shall pay in proportion to the
" value of his property ; and, that where corporate
" authorities of counties, cities, &c., are authorized to
" levy and collect taxes for corporate purposes, the
" taxes shall be uniform in respect to persons and
" property.

" We are not concerned to deal with these
" provisions, as it is perfectly settled by the decisions
" of the Supreme Court of the State that, according
" to the true construction of them, they do not forbid
" the Legislature commuting with individuals or
" corporate bodies the burdens of general or specific
" taxes or assessments, of the character of those in
" question, for what they may deem an equivalent.
" This has been so frequently decided that we need
" only refer to the cases. It is supposed by the
" counsel for the city that this doctrine has been
" modified by the recent cases of Chicago vs. Larned,
" decided in 1864, and The Same vs. Baer, in 1866.
" But, on looking into these cases, we find no references
" to the cases above cited, or to the doctrine they
" maintain. If it were otherwise, however, we could
" not agree that such decisions could have the effect
" to invalidate the contract in question. A contract
" having been entered into between the parties, valid
" at the time, by the laws of the State, it is not
" competent even for its Legislature to pass an act
" imparing its obligation, much less could any decision
" of its Courts have that effect."

Considering the long-continued practical construction and the disastrous consequences, both to private property and to the public, of at this date holding such legislation invalid from the beginning, it is proper and

wise to so construe the constitutional provisions as to validate rather than to invalidate the legislation.

The particular difficulty in construing the Constitution arises from the fact that the State of Minnesota adopted two provisions which, if read technically and literally, are apparently contradictory of each other. Section 1 says that all taxes shall be as nearly equal as may be, and all property *on which taxes are to be levied* shall have a cash valuation and be equalized and uniform throughout the State. It is entirely well settled, as we shall endeavor to show, that under this section the Legislature is clearly given the right to determine what property shall bear the burden of taxation, to classify property, and to levy taxes upon one class of property by a different rule from that applied to other classes of property; it may exempt from all taxation any property or any class of property, or it may, for example, tax improved property by a percentage on rental or income, unimproved property directly by ascertaining its value. This constitutional provision is the common one adopted in the constitutions of a dozen or more Western and Southern States. On the other hand, Section 3 did not accompany in any of the other States constitutional provisions similar to those contained in Section 1. Section 3 was adopted with slight changes from Ohio (see Debates Constitutional Convention 1857), but in Ohio Section 3 was the only provision touching the subject. The constitutional convention of Minnesota adopted Section 1, which is substantially the Constitution of Wisconsin, Illinois, Iowa, Missouri, Kansas and other States *accompanied with* Section 3 taken from Ohio.

In the Constitution of Minnesota the two provisions must be construed together, both as operative and as modifying each other. Some construction must be adopted which will give the fullest effect to both Section 1 and Section 3.

While it must be admitted, as was decided in *Le Duc vs. Hastings*, 39 Minn., 110, that the Legislature cannot exempt any property except of classes enumerated in Section 3, still it remains to be decided whether, taking both sections together, the Legislature is absolutely bound to assess *all property* by a specific, direct appraisal of its value in money.

It may be pertinently pointed out that Section 3 is not self-executing, but is directory to the Legislature. It says that laws shall be passed, etc. Suppose the Legislature fails to pass any law taxing mortgages, for example, it could not be contended that mortgages were taxable. Neither, we apprehend, would this Court decide that all the taxes assessed in the State were void because the Legislature had not passed a law taxing mortgages. And, therefore, it may well be held that Section 3 was not intended to overrule Section 1 so far as concerned the power of the Legislature to determine where the burdens of taxation should be placed (of course, without unjust discrimination) and to classify property into different classes for the purposes of taxation.

Take, for example, a railroad; it has no market value; there are no purchasers; so much money may be invested in it that no person or aggregation of persons would furnish the capital to buy it. Yet it has a value as a system or entity which can best be determined by its earning capacity. The same is true of the property of any corporation which is incapable of separation from the corporate franchises with which it is used, the whole constituting a taxable entity with a value depending on earning capacity, or at least which the Legislature *may* determine by earning capacity.

The determination of value of improved real estate by rental and a taxation by percentage of the rental could not, we submit, be held not to be a constitutional assessment according to value. It is an elementary principle of political economy that rental or earning capacity is one of the very best tests for

determination of value. And, in order to hold that taxation of a railroad by an annual percentage of gross earnings is not taxation of the property according to its value, the Court must overrule this fundamental principle and say that earning capacity may not be taken as a test of the value of property difficult or impossible to determine directly. The Court must hold the very narrow view that no appraisal is based on value, except the ordinary direct and specific assessment of value; when we all know, as a fact, that as to all property operated under and with franchises earning capacity is the best index of value.

See

People ex rel. R., W. & O. R. R. Co. vs. Hicks, 105 New York, 198.
People ex rel. Buffalo & State Line R. R. Co. vs. Barker, 48 N. Y., 70.
Pittsburg, &c., Ry Co. vs. Backus, 154 U. S., 421.
Western Union Tel. Co. vs. Taggart, 163 U. S., 1.

If this is true with respect to taxation of railroads, it is true of the taxation of these land grants as a single entity with the railroad. These grants were universally made to aid in the construction of some railroad. The lands were held upon a trust created by act of Congress for the purpose of aiding the construction of the railroad. Neither the lands nor their proceeds could lawfully be applied or used for any other purpose whatever. While held on this trust they could not be made productive; they could not be built upon, cultivated, improved and made a source of income to the company; they were necessarily held for sale, the proceeds of sale to be devoted to railroad purposes strictly, including the purpose of paying off the mortgages, the money raised upon which had constructed the road. The lands could not be sold and the proceeds appropriated by the stockholders in the way of dividends or otherwise. They are

wedded to and inseparable from the railroad itself. Without them coupled with the commuted taxation, the road might not have been built. *The railroad earnings are produced partly by the lands, because the value of the lands has already been borrowed thereon and put into the road ; the lands are and must continue to be held to aid the road and enable it to produce earnings* (see *McHenry vs. Alford*, before cited, and *State vs. Luther*).

The tax on gross earnings is therefore a tax on the land grant, for the money borrowed on the land grant represents it, and a tax on the earnings of that money is a tax on the earnings of the land grant and on the land grant itself.

Even if the property were not mortgaged, the land grant would be represented by the contribution of stockholders, which would be secured by the land grant as well as by the railroad property created by the stockholders' money.

We deem it hardly necessary or profitable to go into any detailed examination of the decisions made under the Constitutions of other States. A reference to some of the decisions, however, may be of value as throwing light on the common-sense construction placed by the courts upon constitutional provisions relative to taxation.

It has been repeatedly held that constitutional provisions requiring property to be uniformly assessed or taxed, or requiring property to be assessed at its actual value, similar to those under consideration, do not prohibit a Legislature from commuting a tax or contracting for its release for a consideration.

Burroughs on Taxation, 66.
Cooley's Constitutional Limitations, 463 top paging, 4th Edition.
Hunsaker vs. Wright, 30 Ill., 146.

The Constitution of Tennessee of 1834, by Section 28 of Article 2, provided: "*All property shall be taxed*

" according to its value, that value to be ascertained in " such manner as the legislature shall direct, so that the " same shall be *equal and uniform* throughout the " State. No one species of property from which a tax " may be collected shall be taxed higher than any " other species of property of equal value."

Yet, the decisions of the Supreme Court of Tennessee and of this Court have been uniform to the effect that, notwithstanding this provision of the Constitution, the Legislature of Tennessee had the power to grant to corporations created by it exemption from taxation, either total or partial, and for any length of time the Legislature might deem proper.

Knoxville, &c., R. R. vs. Hicks, 9 Baxter, 445.
State vs. Butler, 9 Lea, 400 ; 86 Tenn., 614.
University of the South vs. Skidmore, 87 Tenn., 155.

These decisions are cited and followed in *Mobile and Ohio R. R. vs. Tenn.*, 153 U. S., 486 and 499.

In *Mississippi Mills vs. Cook*, 56 Miss., 40, it is held that under the language of the State Constitution that " Taxation shall be equal and uniform through- " out the State. *All property shall be taxed in propor-* " *tion* to its value, to be ascertained as directed by " law," the words " all property shall be taxed in pro- " portion to its value " do not require that *all* property shall be taxed and deny the Legislature the right to exempt any.

We again call the attention of the Court to the point that we do not, in this case, claim an exemption from taxation, but only the right to a commuted method of taxation, and hence do not need to establish the proposition to the extent laid down in the Tennessee and Mississippi cases.

In the later cases in Tennessee, arising under the Constitution of 1870, the Courts have held that the language of this Constitution is so peremptory that the Legislature must tax all property except that espe-

cially exempt by the Constitution itself, yet even under this Constitution it has been held that railroad property may be taxed upon the basis of earnings and need not be taxed as so much land.

Louisville & Nashville R. R. Co. vs. State of Tenn., 8 Heiskell, 664.

In *Louisville and New Albany R. R. Co. vs. The State*, 25 Ind., 177, the Court construed the provisions of the State Constitution, that "The General Assembly " shall provide by law for a *uniform and equal rate* of " assessment and taxation; and shall prescribe such " regulations as shall secure a *just valuation of all prop-* " *erty*, both real and personal, excepting such only for " municipal, educational, literary, scientific, religious " or charitable purposes, as may be specially ex- " empted by law."

The statute in question provided for valuing the property of a railroad in view of its location, the competition of other roads, its earnings and its condition for present and future business. It also provided that its rolling stock should be included in such valuation. The Court *held* that the rolling stock was so intimately connected with the purposes and uses of the railroad track that it could be properly treated as realty for the purposes of taxation.

The Court further says (at p. 180):

" It is objected that this requires a special method " of appraising the real estate of railroad companies " and contravenes the provision of the Constitution " last cited. But the Constitution does not require a " uniform method of valuation of property, but only " ' such regulations as shall secure a just valuation of " ' all property, both real and personal.' The Legisla- " ture must use a discretion as to the best method of " securing a just valuation of property; and, unless the " method adopted be clearly inadequate to secure that " result, we cannot question its action. The elements " that make up the value of a railroad are not identical

" with those that give value to other property, and it " is certainly proper to take into account, in estimat- " ing such value, every consideration enumerated in the " Statute."

In *Missouri River, Fort Scott & Gulf R. R. Co. vs. Morris*, 7 Kan., 210, it was held that an act providing that the entire road shall be assessed as a whole, and apportioned to the different counties, townships, &c., through which the road runs, is not unconstitutional under the State Constitution, which provides that "The Legislature shall provide for a uniform and " equal rate of assessment and taxation."

The Court say, per VALENTINE, J. (at p. 222): "A " railroad is an entire thing, and should be assessed as " a whole. It would be almost as easy and as reason- " able to divide a house or a locomotive into portions " and assess each portion separately as to divide a rail- " road into portions and assess each portion of it separately."

Followed and approved in *Francis vs. A., T. & S. F. R. R. Co.*, 19 Kan., 303, opinion by BREWER, J.

In *Illinois Central R. R. Co. vs. County of McLean*, 17 Ill., 291, it was *held* that it is within the constitutional power of the Legislature to exempt property from taxation, or to commute the general rate for a fixed sum, and that the provisions in the charter of the Illinois Central R. R. Co., exempting its property from taxation, upon the payment of a certain proportion of its earnings, are constitutional.

The Constitution of Pennsylvania provided that " all " taxes shall be uniform upon the same class of sub- " jects, within the territorial limits of the authority " levying the tax, and shall be levied and collected " under general laws." *Held* in *Kitanning Coal Co. vs. Commonwealth*, 79 Penn. St., 100, that an act taxing coal companies upon their franchises according to the amount of coal mined was constitutional.

Under the Constitution of the State of Wisconsin, which provides that " the rule of taxation shall be uni-

" form, and taxes shall be levied upon such property " as the Legislature shall prescribe," is was held, overruling previous decisions to the contrary and reverting to the rule originally laid down by the Supreme Court of the State, that the Legislature has power to prescribe not only the property to be taxed, but the rule by which it shall be taxed, and that this implied the power to exempt.

Wisc. Central R. R. Co. vs. Taylor County, 52 Wis., 37.

In *Louisiana State Lottery Co. vs. City of New Orleans*, 24 La. Ann., 86, it was *held* that the Legislature has the power to commute the taxes imposed on a corporation created by it, and thereby to relieve it from the payment of all other licenses or taxes by the State itself or by any municipality. The exemption of the Lottery Company, in its charter, from the payment of all other taxes and licenses, on its payment annually into the State treasury of a certain amount for the benefit of the school fund, is not in conflict with the constitutional provision for equality and uniformity in taxation.

In *City of New Orleans vs. Davidson*, 30 La. Am., 554, it is said that " the constitution requires that taxa- " tion shall be equal and uniform, and that all property " shall be taxed in proportion to its value. It confers " upon the General Assembly the power to exempt " from taxation property actually used for church, " school or charitable purposes, and the power to levy " an income tax upon all persons pursuing any occu- " pation, trade or calling, and such tax shall be *pro* " *rata* on the amount of income or business done. The " General Assembly, by Act of March 16, 1870, ex- " empted from taxation every income which shall not " exceed one thousand dollars a year, and household " furniture to the value of one thousand dollars.

Held, not unconstitutional.

MANNING, C. J.: " Perfect equality of taxation is in-

" attainable. A tax on property by valuation is the " fairest mode, but that cannot be apportioned or col- " lected with absolute justice. It is not essential to the " validity of taxation that it be levied according to " rules of abstract justice. * * * So also exemp- " tions, either by failing to include the exempted prop- " erty in the subject of taxation, or by excluding them " by designation, do not necessarily destroy the equality " or uniformity of taxation."

In *City of New Orleans vs. Tomley*, 30 La. Ann., 910, it was *held* that exemptions were valid.

The Court says (at p. 913), per SPENCER, J.: " SECOND. But if defendant's argument is good, all " these exemptions, except those for churches, schools " and charitable purposes, are unconstitutional, for he " maintains that by the Constitution of 1868, '*all prop-* " *erty*' *or none must* be taxed; and he cites Article 118, " which, as seen, declares that 'all property shall be " ' taxed in proportion to its value, to be ascertained as " ' directed by law.' We do not construe that clause as " does the defendant. It simply means that the taxa- " tion of all property subject to tax shall be *ad valorem*. " That specific taxes shall not be levied on property."

In *State vs. North*, 27 Mo., 464, it is said by the Court (at p. 483): " The 19th section of the bill of rights, " which declares that all property subject to taxation " in this State shall be taxed according to its value, has " been repeatedly construed by this Court to mean not " that all the property in the State must be taxed, but " that, when any article of property is selected for tax- " ation, it shall be taxed in proportion to its value, and " not specifically; and the general assembly may, " therefore, not only levy an *ad valorem* tax on the goods " of merchants, but may also impose a tax on their oc- " cupation, to be collected in the form of a license."

The right of the Legislature to treat the lands cov- ered by the land grants as constituting a different class of property from ordinary lands is manifest when

we consider the title under which the railroad holds those lands. They were originally owned by the sovereign as represented by the United States of America, and subsequently by the State of Minnesota. While so held they were, of course, not subject to taxation. They were granted to the railroad company in the aid of construction of the road, and for a public purpose. The railroad company, in receiving them, received them subject to a trust, to use the proceeds in the construction and operation of its road. The public right and interest in the lands, therefore, still continued, and there was, therefore, a special reason why those lands should not be subject to the ordinary taxation imposed upon private property. That the Legislature has the right to make appropriations for the benefit of a railroad enterprise, and to pledge the public faith and credit therefor, is too well settled to need citation of authorities. If instead of appropriating money the Legislature appropriated lands, this is but another form of accomplishing the same result. If in appropriating lands they appropriated them with a proviso that they shall not be taxed except as part of the railroad system and on a commuted basis, this, also, is but another mode of accomplishing the same result (see authorities cited under next Point).

THIRD POINT.

The land grant lands of the St. Paul and Duluth Railroad Company are not subject to the operation of Sections 1 and 3 of Article IX. of the Constitution of the State of Minnesota.

The lands of the St. Paul and Duluth Railroad company are derived from two sources, one, a Congressional land grant to the State for railroad purposes, and the other, a swamp land grant; as to both of these grants, the State of Minnesota was a mere trustee.

The congressional grant could not be taxed until the lands had been conveyed to the railroad company.

The swamp land grant, while it might possibly by a violation of the trust be diverted and become the property of the State before being turned over to the ultimate anticipated beneficiary, could not be taxed until conveyed to some one, except by the State taking from the State Treasury the money with which to pay the tax, which would add nothing to the total tax revenue of the State, and would be against the well-settled policy of the State; consequently, not a dollar could be derived in the shape of taxation from the congressional grant, nor from the swamp land grant, which could be added to the total tax revenue of the State, until some person or corporation assented by express terms, or by implication, to a condition with reference to ownership of these lands which would place them where, independent of any State legislation, they could become the subject of taxation for the purpose of enhancing the revenues of the State. In other words, neither class of lands, under the law and under the policy of the State, could ever become a part of the taxable domain of the State until some one, other than the State, consented thereto, by accepting the lands under a contract with the State of Minnesota.

The State not only could, but under the spirit of the Federal grants was under an obligation to see that the lands in the disposition thereof served the purpose for which they were granted, namely, the development of the enterprise sought to be developed through the use of the grant.

The State was a trustee charged with the duty of executing a trust, dedicating these lands, within the purview of the Federal grant, to the purpose for which

they were designed, and could not tax the lands until, under some contract, they passed into the hands of some one willing to accept them under such contract.

No one will contend but what it would have been perfectly competent for the Legislature, in making either the grant of swamp or congressional lands, to have provided that the State should retain the title, not only until the lands were earned, but until individual purchasers were found by the company, and that it would have been competent, in such case, not only to have provided for a commuted form of taxation between the time when they were earned and the purchaser was found, but an absolute exemption until a purchaser was found. In fact, it is not the use of a land grant that is the inducement for its acceptance and the construction of a railroad in consideration thereof, but it is the ultimate proceeds to be derived from the sale thereof.

It is true that the grant earned and unearned may be the subject of a mortgage, but it could just as well be the subject of a mortgage under the proposition above stated.

When once a contract is made for a grant of lands with the State, the title remaining in the State, and the contract is complied with by the company, for all practical purposes it derives the same benefit that it does upon a grant being conveyed to it. It is not the use of the land, but their ultimate proceeds, that is the consideration and object sought.

Indeed, the purpose of Congress that these lands should be devoted to railroad development cannot be effected before the lands are sold by the railroad company, and the proceeds thereof received by it.

If the State could have entered into the contract above suggested, it could accomplish the same result by a contract similar to the one under consideration, and we rest this proposition upon this principle:

These lands never became—and there was no possibility by which they could become—a part of the

public domain for taxable purposes, except by the terms of a contract; and, as in the case at bar, the contract contained the provision relative to taxation, they are not, until they pass beyond the range of that contract, within the purview of Article 9 of the State Constitution. Not only does this argument rest upon the clearest legal principle, but it is supported by authority.

The People vs. Auditor General, 7 Mich., 84, which is an authority in support of this contention, goes beyond that which we contend for, as in that case there was no pretense of a commuted tax, or a tax in lieu of the exemption, but there was an absolute unqualified exemption in the form of an abatement. In the case cited, the land was granted by the Federal Government to the State of Michigan for the construction of a ship canal. The State Legislature authorized the Commissioners to let the contract for the construction of the canal, and in their discretion to contract that any taxes to be assessed on the lands donated for that purpose should be remitted, for a period not exceeding five years, to the person or persons taking the contract; and provided that, when any land should be sold by the contractors, it should become subject to taxation. Two questions were involved:

First, whether the act providing for the remission of taxes was constitutional.

Second, whether the lands under consideration had been sold.

Upon the first proposition, the one now under consideration, the Court say:

"It is evident from a consideration of these acts "that the land never was a part of the public domain "of Michigan, either by grant from congress or by "sale to a purchaser, before the passage of the act in "question, so that the right of taxation had accrued "to the state. The state had power to contract with "the company to convey the lands after five years, and

" thus relieve them during that period from taxes, and " if it might do this it is difficult to find a reason why " it might not so convey them as to secure the same " exemption from taxation."

The principle that lands, as to their taxability, may be held in abeyance by the State, is found in the Parcher case (14 Minn., 253) and in the cases of *Minnesota vs. Winona & St. Peter Railroad, 21 Minn., 315*, and *State vs. Winona & St. Peter Railroad, 21 Minn., 472.*

In fact, in all the cases where the exemption has originally rested upon a contract entered into before the Constitution was adopted—take, for instance, the Parcher case—the lands were exempted by a law passed before the adoption of the constitution. When the Constitution was adopted these lands practically, so far as their taxability was concerned, were as exempt from taxation as the Congressional or swamp-land grants held in trust by the State and covered by the contract with the companies in the case at bar.

The lands. having this condition appurtenant thereto, passed to the State by foreclosure, and were afterwards conveyed to the grantee of the State by acts of the Legislature. When so conveyed the exemption inuring to the grantee inured, not by virtue of a contract made before the State Constitution was adopted, but by virtue of a contract entered into between the grantee and the State of Minnesota after the Constitution was adopted, whereby the State granted the lands with the exemption because the Territorial acts and foreclosures vested the lands, not in the grantee of the State, but in the State itself, subject to disposition by the State. If the Legislature, then, after the adoption of the State Constitution, could make a contract with the company granting to that company lands with an exemption that existed, not by any right of the company, but by virtue of the power of the State to keep alive and convey such exemption, it follows, without argument, that the State could do

precisely the same thing with the Congressional or swamp-land grant which was not subject to taxation at the time the contract between the State and the companies was made.

This position is indicated in State vs. Luther, p. 164, where the Court refers to the fact that the Legislature assumed, in making a grant of lands to build a railroad, or in executing a trust created by Congress, that it had the power, in furtherance of the object for which the grant was made, to exempt such lands from ordinary taxation, and to provide for the commuted taxation for both the railroad and the granted lands.

In *Wisconsin Central R. R Co. vs. Taylor County*, 52 Wis., 37, the Court *held* not only that the Legislature had authority under the Constitution of the State to select the subjects of taxation, but also (see p. 96): "(10) While the lands described were held (by the "State) in trust for the building of the proposed line "of road now owned by the plaintiff, and hence not "subject to taxation, the Legislature had the power, in "furtherance of that object and in execution of the "trust, to exempt the same from taxation for a term "of years." Of course, the power to exempt for a term of years would imply the power to exempt perpetually, so long as held by the railroad company.

In *People vs. Auditor-General*, 7 Mich., 84 (above cited), the Court upholds the right to grant exemptions from taxation, notwithstanding a constitutional requirement that "the legislature shall provide an uniform "rate of taxation, except on property paying specific "taxes."

The Court further *held* that lands granted by the United States to the State to aid in the construction of a ship canal around the Falls of St. Mary's were granted in trust for this purpose. "Instead of selling "the lands, and appropriating the avails towards the "construction of the canal, the Legislature found it "desirable, if not necessary, to appropriate the lands "themselves. From the course of legislation we may

" presume that this appropriation of the lands was " found to be insufficient of itself to induce any one " to undertake the work, and that in order to render " it sufficient, the State authorized the contract for the " remission of the taxes thereon. *This authority was* " *given and the contract executed, while the lands were* " *in a condition in which they could not be taxed, and* " *until such right of taxation had accrued to the State it* " *was not within the scope of either its constitutional or* " *legislative provisions.* The State had power to con- " tract with the company to convey the lands after five " years and thus relieve them during that period from " taxes, and if it might do this it is difficult to find a " reason why it might not so convey them as to secure " the same exemption from taxation. In making this " contract the State acted as the trustee of the Gen- " eral Government; in the law authorizing the con- " tract it was dealing with the subject of the trust, " over which no right of taxation then existed."

In *Portland vs. Water Co.*, 67 Maine, 135, it was held that it was within the constitutional authority of the Legislature to empower the City Council of Portland to exempt from taxation for a term of years property of the Portland Water Company, in consideration of an undertaking and agreement by the company to furnish, free of cost to the city, a supply of water for its public and municipal purposes.

The Constitution provided that " all taxes upon real " estate, assessed by authority of this State, shall be " apportioned and assessed equally, according to the " just value thereof."

The Court say (at p. 137): " We are not satisfied " that the Legislature cannot, by charter or contract, in " any case and under any circumstances, release one " corporation from taxation, merely because it does not " include in its exclusion from taxation all similar " corporations in the State.

" The property of the defendants has been appro- " priated and devoted to a public use and may be ex-

" empted from taxation for the same reason that town " houses and school houses and railroad tracks are " exempted. It was only because their works were " public works that they would be permitted to take " land for their purposes under the exercise of the " right of eminent domain. True, the title of the prop- " erty is vested in the corporation. But the corpora- " tion holds it, to some extent, as a trustee for the " public. It must be used for the public, and in a " great measure, its use may be controlled by the " public."

In *State of Arkansas vs. County Court of Crittenden County*, 19 Ark., 360, it was held that lands granted by Congress to the State for the purpose of enabling the State to construct levees and drains to reclaim the swamp and overflowed lands therein and sold by the State with an exemption from taxation for ten years or until said lands are reclaimed were protected by the contract of the State from taxation during the period named, and an Act of the State Legislature taxing them was repugnant to the U. S. Constitution and void.

It was further held that the exemption was not repugnant to the Constitution of the State to the effect that " all property, subject to taxation, shall be taxed " according to its value," and that " no one species of " property from which a tax may be collected shall be " taxed higher than another species of property of " equal value."

In *First Division of St. Paul and Pacific R. R. Co. vs. Parcher*, 14 Minn., 297, it is said (at p. 304): " As " a recipient of the Congressional Land Grant, the " State had assumed a trust which good faith and pub- " lic interest required to be discharged in the way most " likely to accomplish its purposes. That it was neces- " sary to hold out great advantages in order to induce " parties to enter upon and prosecute the construction " of the roads, is matter of history. The long delays " and repeated discouragements which the people of

" this State experienced in their attempts to secure " convenient communication with the markets of the " country are familiar to all."

And again, at page 330 : " It is entirely proper for us " to refer to the state of things existing when the " policy to be adopted was under consideration by " the Legislature. The State was then almost a " wilderness. Its population was small and sparse, its " capital limited, its business depressed, its resources " undeveloped. There was not a mile of railroad " within its borders. An outlet by rail for the prod- " ucts of the State was a matter of prime and pressing " necessity. The inducements which we were able to " hold out to secure this outlet and the construction " of needed lines of railway consisted rather in what " the State was to be than in what it was. The " country at large had hardly recovered from the " financial revulsion of 1856–7. How soon railroads " in this State would prove remunerative to their " onwers, as well as how soon the lands would sell, " were matters of conjecture and experiment. And " notwithstanding repeated and continued tenders of " all the roads, lands and franchises, together with the " privileges and exemptions in regard to taxation, it " was not until the summer of 1862 that the first ten " miles of railway were put into operation in this " State. These facts are not without weight in con- " sidering whether the grant of lands, without the ex- " emption from taxation, would probably have induced " capital to undertake the construction of the roads, " especially when we take into account the proverb- " ially high rates of taxation in newly settled com- " munities."

These lands were not subject to taxation by the State as long as they remained public land. The grants made by Congress could not be taxed by the State until after they passed into private ownership. So long as they remained public lands they were not subject to the taxing power of the State nor to the

limitations on that power expressed in Article IX. of the Constitution. These limitations related to private property only. Now, in order to get a private corporation to build a road, the State found it necessary to make a certain contract ; it accepted the construction of the road and payment of taxes based on its earnings, and granted in consideration thereof the lands free from any other taxation until the company was able to sell them. Thereby the rights, immunity, or privilege to pay taxes only according to earnings was impressed on the land while it was yet public property. Subject to that privilege or immunity it passed into private ownership. The immunity attached to the title before the company accepted or earned the lands. The constitution, we submit, was not intended to prevent the State from making such bargains as to its own public domain or as to Government land within its borders, if it found such contracts reasonable and necessary to secure works of internal improvement. And whether such contracts were reasonable or necessary is, of course, a question which was settled by the Legislature : This was one of the points decided in *People vs. Auditor*, 7 Mich., 84, and in *Illinois Central Railway vs. McLean County*, 17 Ill., 296. We know of no authority to the contrary. This doctrine is evidently consistent with the view which has since the organization of the state been held of legislative power, not only by the Legislature itself but by the executive department, by the courts and by the people. This view, if adopted, renders it unnecessary to construe or define Sections 1 and 3, Article IX. of the Constitution, or to reconcile the conflict between them, which may be found to exist if both are read and construed strictly. It will avoid the disaster, the extent of which no one can foresee or measure, of holding that a large portion of the tax system of the State has been void from the beginning and that a legal tax has never been levied in the State of Minnesota.

FOURTH POINT.

The statutes under which the St. Paul and Duluth Railroad Company claims the right to commuted taxation were not only valid and constitutional enactments of the Legislature of Minnesota, but they constituted irrevocable contracts between the State and those companies.

By the act approved February 23, 1865, the State accepted the trust reposed in it by Congress when the State received the grant of lands to aid in building this road, and, in the same act, as part of the consideration for the acceptance of the State's offer upon the part of the railroad company, it was set forth :

" That, in consideration of lands granted by this act, " and of the lands, rights and privileges and franchises " which have heretofore been granted to said railroad " company, the said company shall, on or before the " 1st day of March of each and every year after said " railroad is completed and in operation, pay into the " treasury of the State three per cent. on the gross " earnings of said railroad, which sum shall be in lieu " and in full of all taxation and assessment upon the " said railroad, its appurtenances and appendages, and " all other property of said company, real, personal " and mixed, including the lands hereby and heretofore " granted to said company or so intended to be."

It further provided that the lands were granted on condition that twenty miles should be completed within three years from July 4, 1865, and the whole line within five years from that date ; also, that the road should deposit $20,000 United States bonds with the State Treasurer, to be forfeited if the company should fail to complete the road within the time fixed. This act was accepted by the railroad company February 25, 1865.

This act and its acceptance clearly constituted a contract between the State and the railroad company. It has all the elements of a contract. There were mutual agreements on the part of the State and the railroad company. The State granted the lands, and it agreed, among other things, to accept three per cent. of the gross earnings of the railroad after it was completed, in lieu of all other taxation upon the property of the company, including the granted lands, provided that the lands should be taxed as other lands after they were sold, contracted to be sold, conveyed or leased; and provided further that they should be taxed as other lands in five years after the railroad company should become entitled to the lands. On the other hand, the railroad company, in consideration of the agreements of the State, agreed among other things to pay to the State the three per cent. of its gross earnings, in lieu of all other taxation, on or before the first of March of each and every year after the road was completed and in operation. It agreed to complete twenty miles of the road within three years from July 4, 1865, and the whole line from St. Paul to Lake Superior within five years from July 4, 1865. It further agreed to deposit $20,000, or that amount of United States bonds, with the Treasurer of the State, to be forfeited if the road was not completed within the time provided in the act. These mutual agreements clearly contemplated a binding contract between the State and the railroad company, and under the terms of this contract the railroad company was not bound to pay any gross earnings tax until the whole line was completed and in operation.

This being the situation, eight days later another law was passed which was an amendment to the Act of February 23, which is the Act of March 3, 1865, being Chapter 8 of the laws of that year. This law changed the terms of the previous act in so far as it related to taxation of the railroad property.

This second act provides that, whenever any lands

theretofore or thereafter granted to the company shall be sold, contracted to be sold, conveyed or leased by the railroad company, they shall be listed for taxation as other real estate; that all acts in relation to the taxation of said lands in conflict with the provisions of this act are repealed, and provides further that during the first three years after thirty miles of said railroad shall be completed the company shall pay to the State one per cent. of its gross earnings, and during the next seven years two per cent., and after the expiration of said seven years three per cent. of its gross earnings, "and the payment of such percentage "annually, as aforesaid, shall be and is in full of all "taxation and assessment."

Section 2 of this latter act contains this provision:

"That upon the filing by the said company, in the "office of the Secretary of State, of a notification of "its acceptance of this Act, the same shall become "obligatory upon the State and upon the company; "provided, that such notification shall be given within "sixty days."

The acceptance and the notification were duly given.

This act was passed and accepted by the railroad company before that company commenced to construct its railroad and the railroad was built upon the faith of it. This is alleged in the answer (fol. 29), and was admitted on the trial (fol. 94).

That this act was intended by the Legislature and the railroad company as a contract is plain. It is enacted in the form of a contract, and Section 2 provides that it shall become obligatory upon the State and the railroad company upon the company filing its acceptance of the act in the office of the Secretary of State, and the meaning of the act is that the granted lands of the company shall not be taxed as other lands until contracted to be sold, conveyed or leased, and that the payment of a percentage therein provided should be in lieu of all other taxation of the property of the railroad company, including the granted lands.

The plaintiff in error claims that this law, together with the acceptance of it by the railroad company, constitutes a contract which cannot be repealed or changed without the consent of the railroad company.

It did not need the statutory expression upon the part of the State to the effect, that the filing of the acceptance would make a contract binding equally upon the State and upon the company. The mutual obligation was created by the acceptance of the offer made in the act.

In the clearest terms, and in the most emphatic manner, has the Legislature spoken in Chapters 2 and 8 of the Laws of 1865, with the intention of holding out to the railroad company a sufficient inducement for the great outlay necessary to build the roads. It was the presence of these inducements, of which the land grants were part, that gave to the company the credit which is the life of such a corporation. The filing by the railroad of the acceptance of the conditions imposed upon it by the State made the contract. Then began the work of building and completing the railroad, whereby the lands, as the road advanced, were earned by the company and held or sold for the benefit of the stockholders. The fact is clearly established that the railroad was constructed after the passage of the Acts of 1865, and in reliance upon them. These acts constituted part of the charter of the company, and preceded the acquisition of necessary capital, and gave the company the necessary borrowing power, and security absolutely essential to the construction of the railroad.

It may be said that, especially in the case of a "land grant" railroad is the amount and manner of taxation a matter of affecting the value of its stock and its ability to obtain credit.

The St. Paul and Duluth Railroad Company was organized the 27th day of June, 1877, and succeeded to the property, rights, franchises and privileges of the

Lake Superior and Mississippi Railroad Company on the 19th day of July, 1877, by purchase.

It was conceded below by the respondent (defendant in error here) in his brief, that the doctrine is settled that a State, in the absence of a constitutional provision to the contrary, may irrevocably contract away the right to tax the property of the contractee, and he cited the following cases:

State vs. Wilson, 7 Cranch., 164.
Tomlinson vs. Branch, 15 Wall, 460.
Humphrey vs. Pegues, 16 Wall, 244.
Pacific R. R. vs. McGuire, 20 Wall, 36.
Megee vs. Mathis, 4 Wall, 143.
R. R. Co. vs. Loftus, 105 U. S,, 258.
1st Div. St. P. & P. vs. Parcher, 14 Minn., 224.
State vs. Luther, 56 Minn., 156.

It has been held in the Supreme Court of the United States from the beginning that a State may by contract to that effect, based upon consideration, exempt the property of an individual or corporation from taxation for any specified period or permanently; and that where an act or charter contains an exemption in consideration that taxes shall be paid to a specified amount or upon a particular basis, this arrangement is presumed to be on sufficient consideration and consequently binding upon the State (*State of New Jersey vs. Wilson*, 7 Cranch., 164; *Gordon vs. Appeal Tax Court*, 3 How., 133; *State Bank of Ohio vs. Knoop*, 16 How., 369; *The Jefferson Branch Bank vs. Skelly*, 1 Black., 436; *University vs. People*, 99 U. S., 309; *Asylum vs. New Orleans*, 105 U. S., 362; *Pearsall vs. Great Northern Ry. Co.*, 161 U. S., 662; *Mobile & Ohio Railroad Co. vs. Tennessee*, 153 U. S., 486).

As the greater includes the less, the power of the State, unless restrained by its Constitution, is clear to pass statutes of the character of Chapters 2 and 8, by which a tax on gross earnings is imposed in lieu of all other taxation, thereby effecting not an exemption, but a

commuted form of txation, in which the per centum tax is construed as an equivalent of the tax against all the property itself of the railroad corporation.

The language of the acts in question provides for a contract, which became binding upon the construction of the road. The submission of an act with the provision that its acceptance by the party to whom it is tendered shall make it obligatory upon the State and upon the party is the strongest possible form of enacting a contract between a State and a person or corporation.

At the outset of the discussion of this branch of the case we desire to emphasize the fact that while this system, in common parlance, creates an exemption of the land grant lands, yet there is no exemption, but, as we have already urged, there is a commuted system of taxation which includes a tax upon the land as well as upon all the other property of the company, and this distinction becomes material from the fact that a different rule of construction of statutes obtains where an absolute exemption is granted a corporation from that which obtains where there is no exemption, but a commuted system of taxation. This distinction is clearly made in *City of St. Paul vs. St. Paul & Sioux City R. R. Co., 23 Minn., 469*, where it is said that

" When property is actually exempted from taxation " the statute must be limited in its scope and opera- " tion to the express words of the statute, or within " some necessary implication from its terms.

" When, however, the statute relieves, as in this " case, the corporate grantee of the exemption from no " portion of its just and equal share of taxation in " respect to any of its property, but merely provides a " mode of commutation therefor based upon the per- " centage of earnings or income agreed upon as a just " exaction equally advantageous and beneficial to the " State, this rigid rule of construction must be so far " modified as to harmonize with other well-settled rules " of construction."

That the legislation now considered amounted to a contract in form and terms, and was an agreement for a commuted system of taxtion instead of an absolute exemption, is amply borne out by the decisions of the State of Minnesota and of this Court.

The Supreme Court of Minnesota itself has held that the legislation in question possessed all the elements of a binding contract based upon a valuable consideration and if valid when made, irrepealable and irrevocable.

In *First Division of the St. Paul and Pacific R. R. Co. vs. Parcher*, 14 Minn., 224, the Court overruled the contention that, as the taxing power is a *sovereign* power it is not competent for a Legislature to alienate it. The Court held that the charter granted by the Territorial Legislature in 1857 to the Minnesota and Pacific Railroad Company constituted a contract between the territory and the railroad company, "one of "the terms of which was that the lands granted in "aid of the road should be exempt from taxation till "sold and conveyed by the company. That the ex- "emption thus conferred is a contract right, a right "which a Legislature, in the absence of constitutional "inhibition, is competent to grant, and inviolable, has "been settled in a series of decisions by the Supreme "Court of the United States, so that the matter is not "open to discussion *(State of New Jersey vs. Wilson*, "7 Cranch, 164; *Gordon vs. Appeal Tax Court*, 3 "Howard, 133; *Jefferson Branch Bank vs. Skelly*, 1 "Black, 436, and *cases cited)*" (p. 326).

The Court further *held* that the Territorial Legislature had power to pass the statute and to bind the future State by the contract thereby created.

The Court further say: "It is also urged by the "defendants that the exemption from taxation was "granted to the Minnesota and Pacific Railroad Com- "pany without consideration, and that therefore it "does not come within the principle of the decisions "of the Federal Supreme Court before cited, but is

" rather to be classed among the *privilegia favorabilia*,
" spoken of in *Christ Church vs. County of Philadel-*
" *phia*, 24 How., 300, and may therefore be revoked
" at the pleasure of the sovereign. We are of opinion
" that a sufficient consideration is to be found in the
" agreement of the Company to construct the road,
" and to fulfill the other duties imposed by the charter,
" and among them to pay three *per centum* of the gross
" earnings of the road into the treasury of the Territory
" or future State " (p. 328).

It was further *held* that this immunity from taxation passed by foreclosure, and passed with the lands as appendant thereto.

The State having acquired the property and franchises of the railroad company by foreclosure, took and held what it acquired, not in its sovereign character, but as property, like a private individual, and could and did rightfully transfer the same, including the immunity from taxation, to the St. Paul and Pacific Railroad Company.

This case, therefore, firmly establishes the proposition that such statutes as those under consideration providing for a commuted tax constitute a contract, resting upon sufficient consideration, which the Legislature of Minnesota, in the absence of constitutional inhibition, could make.

State vs. Winona & St. Peter R. R. Co., 21 Minn., 315.

This was a case of an exemption granted before the adoption of the Constitution.

The Court refers to the Parcher case and holds that the constitutional requirement "laws shall be passed " taxing, etc., all real and personal property at its true " money value," did not render void the transfer by the State to the company of the railroad property with the immunity to the land grant from taxation, although the law was passed after the adoption of the Constitution.

In State vs. Winona & St. Peter R. R. Co., 21 Minn., 472, appears a further discussion of the consideration for the contract with the State offered by the company. Speaking of one of the sections of the original act, the Court says, on page 477 :

"This is a contract between the State and Company "and whether it is provident or improvident, each "must abide by it according to its true intent."

And on page 478 it said :

"This three per cent. is provided as a commutation "for all taxes, which, but for the exemption, the com- "pany would have to pay. Further, the commutation "for public burdens imposed upon property was one of "the inducements held out to the company to under- "take the enterprise."

In *C., M. & St. P. R. R. Co. vs. Pfaender, 23 Minn., 217*, discussing the effect of the legislative acts amendatory of the legislative acts of the territory under consideration, the Court said on page 223 :

"By the terms of the section as amended, exemp- "tion from assessments and taxation was granted in "consideration of the annual payment of the specific "per centum of gross earnings. The obligation as- "sumed by the State in making the grant, and that of "the Company in receiving it, to make the required "payment in lieu and in full of all assessment and "taxtion were, in a certain sense, moral and recipro- "cal obligations."

"And it was obviously the intention of the State that "the grant of immunity from taxation should be "treated and regarded as a conditional one, charged "with the perpetual burden of the annual payment "therein provided, so that any company took it sub- "ject to this condition and burden, and the charge."

This language could have no application to anything else than a contract.

City of St. Paul vs. St. Paul and Sioux City R. R. Co., 23 Minn., 469, was an attempt to tax certain lands of the defendant company in the City of St. Paul. The

opinion is a clear and exhaustive discussion of the prin iples involved in the case under consideration. After pointing out the distinction between absolute exemption and a law which does not relieve the company from its share of taxation, but simply provides a mode of commutation therefor, and designating this as an agreement equally advantageous and beneficial to the State, the Court discusses the policy of the State in entering into contracts of this nature, and on page 472 says :

" The policy contemplated as the basis of taxation " the annual gross earnings, instead of an *ad valorem* " assessment of franchises and property, and, instead " of a general and local system of taxation, the pay- " ment of a fixed per centum for the benefit of the " whole state was provided for in lieu of all taxes what- " soever. This it was suggested would prove less " vexatious and burdensome to the companies in the " infancy of their existence, and ultimately more ad- " vantageous and productive to the revenues of the " state, and clearly more just and equal to all locali- " ties thereof. Experience is fast demonstrating the " wisdom of this policy and realizing the expectations " of its founders."

On page 474 the Court takes up the question of legislation subsequent to the adoption of the Constitution, and says :

" The Company held its lands, property, immunities " and franchises under the grant made prior to the " adoption of the Constitution, and, upon the renewal " of the grant in 1864, it was clearly competent for the " legislature to change and modify its terms and " conditions."

It must be borne in mind, in connection with the language above quoted, that the Court is speaking there, not of the power of the Legislature independent of the consent of the company, but of the authority of the Legislature to make this modification with the company of the original contract. A reference to Sec-

tion 9 of the act under consideration there shows that it was made upon the express condition that the grantees accepted the grants, thereby ratifying and confirming the same as tendered in the act in question. The Court then proceeds:

"And the enactment of March 4, 1864, in this re-
"gard, has not only been uniformly recognized and
"acted upon ever since as valid by both the executive
"and legislative departments of state, but by an ex-
"press constitutional amendment adopted in 1871 it
"has been placed beyond the reach of any amendment
"or repeal, except by a law ratified by the vote of the
"electors of the State."

State vs. Northern Pacific, 32 Minn., 294:

Here the Court, speaking of the condition annexed to the grant—to wit, the payment of the gross earnings tax—characterizes it as an "Obligation" (p. 295).

And, in speaking of the act under consideration in the case at bar (p. 299), uses the expression:

"Undoubtedly, the exemption of a railroad in con-
"sideration of a percentum upon its earnings," etc.

County of Hennepin vs. St. P., M. & M. R. R. Co., 33 Minn., 534:

This was an application by the county for a judgment against certain lands for taxes. The defendant company was then paying three per cent. of gross income under a territorial act.

The Court (p. 535) said:

"The effect of this statutory provision is that the
"right to assess a tax upon the land in specie is super-
"seded by the obligation of the respondent to pay the
"three per cent. This is not an immunity from taxa-
"tion but a commutation of taxes, another and substi-
"tuted way prescribed by law, in which the company,
"as the owner of the land among other property, con-
"tributes its share to the public revenue."

County of Ramsey vs. C., M. & St. P. Ry. Co., 33 Minn., 537 :

The Court, on page 540, referring to the Act of 1873, which was accepted by the company, said :

" The corporation having accepted and become sub-
" ject to the provisions of this act, its rights, as well as
" those of the State, are to be determined by it."

And on page 542, say :

" It must be supposed that it was contemplated that
" this system would, upon the whole, fairly effect the
" objects of taxation with respect to such corporations
" and be equivalent in its results to taxation of the
" property owned by them."

St. Paul and Chicago Ry. Co. vs. McDonald, 34 Minn., 195 :

The plaintiff railroad company succeeded to the rights of the Minn. and Pacific R. R. referred to in this case.

The Court said :

" By the charter of this Company a commuted sys-
" tem of taxation was stipulated for, by which in con-
" sideration of the payment of a percentage of gross
" earnings, the lands and other property were to be
" exempted."

This latter case involved the consideration of an act of 1863, modified by Chapter 9 of the Laws of 1865; this latter law contained a provision for its acceptance by the company, and on page 209, after holding that a transaction between the railroad company and a trustee amounted to a sale of the land, the Court said :

" The State should and must, in letter and spirit,
" religiously keep its contract obligations, but the law
" will not tolerate the use of mere forms to evade its
" spirit."

And the Court held that under the instruments which it was held amounted to a sale, the land was, in fact, sold and became taxable.

County of Stevens vs. St. P., M. & M. Ry. Co., 36 Minn., 467:

In 1865 two acts were passed, one March 2d and the other March 4th, which were the subject of discussion in this case. By the act of March 2d, it was provided that the lands should be subject to taxation as soon as sold, leased or contracted to be sold or leased; by the provisions of the Act of March 4th, as soon as any of the lands should be contracted to be sold, they should be placed upon the tax list, but in enforcing the collection of taxes, neither the title of the company nor any trustee should in any manner be affected, but only the interest of the purchaser or lessee should be taxed.

Section 2 of the Act of March 4th provided for the acceptance of the same by the company. On page 471, speaking first of the Act of March 2d, the Court said:

"For the purposes of this case it is unnecessary to "consider what would have been the effect of this en- "actment, if without modification it had been accepted, "for it does not appear that there was any acceptance. "The modification of the right of exemption expressed "in the act of March 2d could only have been made "effectual by the assent of the corporation, for the ex- "emption previously stated was a contract right which "the state alone had any power to impair.

"From the fact as presented in the case, the act of "March 4th appears to have been an offer on the part "of the State of another and a modified term respect- "ing the taxation of the lands, in place of that em- "braced in the contract tendered in the enactment of "two days previous."

In this case the Court reiterates what has been so often stated, that the per centum tax is a tax in lieu of other taxation.

County of Todd vs. St. P., M. & M. Ry. Co., 38 Minn., 163.

The question here was whether lands purchased and turned over to the company came within the tax provisions of its charter, and the Court, on page 165, say:

" It has been considered that the purpose of such " taxation has been, not to exempt property from taxa- " tion, but to provide a substituted method of secur- " ing to the State its proper revenue from the taxable " property of these corporations."

We have here, then, the declaration of the Court that the per centum tax does not relieve the company from its share of taxation, and that the right to tax the land in specie is superseded by the obligation of respondent to pay the per centum tax by which the respondent is to contribute its share to the public revenue, and through Judge DICKINSON the Court says that :

" It must be supposed that it was contemplated that " this system would, upon the whole, fairly effect the " objects of taxation with respect to such corporations, " and be equivalent in its results to taxation of the " property owned by them."

And again, through Judge DICKINSON, in the Todd County case, the Court says :

" That the purpose of such taxation is to secure to " the State its proper revenue from the taxable property of these corporations."

In St. Paul vs. St. P., M. & M., 39 Minn., 112, this doctrine is reaffirmed. This Court, page 113, said :

" As was said in *County of Ramsey vs. Chicago, " Milwaukee & St. Paul*, these charters did not exempt " the property from taxes, but provided a substituted " method of taxation, based upon the assumption that " the property of the companies will be used for rail- " road purposes, and thereby an income be derived, " the percentage of which, received by the State, will " be equivalent in its results to the taxation of the " property."

In County of Marvin vs. Drake, 40 Minn., 137, involving a discussion of this same subject, the Court used this significant language :

"We fail to see how this involves any violation of " the contract of the state with the company. What

" the state contracted was, not to tax the land in specie,
" while it belonged to the company. The fallacy in its
" argument is the assumption that the payment by the
" company of this per centum tax amounts to a pay-
" ment of the taxes upon all property which the com-
" pany may have owned at any time during the year,
" regardless of its ownership at the particular date in
" the year fixed by law to determine its status for the
" purpose of taxation. The percentage of the gross
" earnings paid by the company is merely the equiva-
" lent of a tax it would have to pay had a tax in specie
" been assessed."

The Court will see that there is an unbroken line of decisions in the Supreme Court of Minnesota, which sustains the proposition that a law which fixes a per centum tax is not an exemption, but a system of commutation. There is no gratuity, but a contract inviolable in its nature, and that prior to the adoption of the State Constitution the territorial Legislature had the unquestioned right to enter into contracts of this nature. This proposition is supported by the uniform decisions of the Supreme Court of the United States, where the doctrine is laid down and reaffimed, that the State may enter into a contract which cannot afterwards be repealed or modified without the consent of both parties to such contract; that while no contract will be presumed and the party relying on the contract must establish its existence, when once established, any law modifying it without the consent of the other party is a law void as impairing the obligation of a contract.

Judge COOLEY says (*Cooley Constitutional Limitations*, 127):

" And it now seems to be settled by the decisions of
" the Supreme Court of the United States that a state
" by contract to that effect based upon a consideration
" may exempt the property of an individual or corpo-
" ration from taxation for any specified period or even
" permanently. And it is also settled by the same de-

" cisions that, where a charter containing an exemption " from taxes or an agreement that the taxes shall be " to a specified amount only is accepted by the corpo- " rations, the exemption is presumed to be upon a suf- " ficient consideration and consequently binding upon " the State."

Some of the decisions of the Supreme Court of the United States upon this point are the following :

State of New Jersey vs. Wilson, 7 Cranch, 164.
Gordon vs. Appeal Tax Court, 3 How., 133.
State Bank of Ohio vs. Knoop, 16 How., 369.
The Jefferson Branch Bank vs. Skelly, 1 Black, 436.
University vs. People, 99 U. S., 309.
Asylum vs. New Orleans, 105 U. S., 362.
Pearsall vs. Great Northern Railway Co., 161 U. S., 662.

It is true that, assuming that such a contract may be made, still it will be construed strictly in favor of the State, and it must clearly appear that the State intended that the special law providing for taxation of the property of the railroad company should not be changed without consent of the railroad company.

Let us apply that rule to the Act of March 3 :

The object and purpose of this act is to provide a scheme of taxation of the property of the railroad. That appears in the title and throughout the whole law. The second section of the act is : " That, upon the filing " by the said company in the office of the secretary of " state of a notification of its acceptance of this act, " the same shall become obligatory upon the state."

What shall become obligatory upon the State ? Why, this act, this method of taxation. Can this language bear the construction that this act shall be obligatory on the State until the State sees fit to change it ? That would be no obligation at all.

The first section of the act provides that, whenever these lands are contracted to be sold, conveyed

or leased, they shall be taxed as other lands. Can that be construed to mean that they may be taxed as other lands before they are contracted to be sold, conveyed or leased, if the Legislature sees fit to so provide? If so, then this act is not obligatory on the State.

The act provides that the railroad company shall, during the first three years, after thirty miles of said railroad shall be completed and in operation, on or before the first day of March in each and every year pay into the treasury of the State one per cent. of its gross earnings, and the payment of that sum shall be in full of all taxation and assessment whatever. Can that be construed to mean that the Legislature might the following year provide that the railroad should pay three per cent. or five per cent. instead of one per cent.? If that construction is to be placed upon the act, is it obligatory on the State? The law provides that after thirty miles of the road have been built and in operation ten years, the payment by the railroad company of three per cent. shall be in lieu of all other taxation and assessment whatever. Does that mean that the payment of that percentage shall not be in lieu of all other taxation if the State sees fit to provide for other taxation? Does this act mean for example, that the following Legislature could pass a law putting an additional tax upon the engines and cars of the railroad company?

Nothing can be plainer than that this act means just what it says: The payment of three per cent. shall be in lieu of all other taxation, and that provision and all the provisions of the act are intended to be binding upon the State and not to be changed without the consent of the railroad company.

But when these acts were considered by this Court in the case of *State vs. Luther*, 56 Minn., 156, Judge MITCHELL clearly expressed what the Legislature intended by this act. He says:

> " And it is also perfectly clear to us that under
> " the second act, even if the repealing clause was

" absent, the legislature *intended that the granted*
" *lands should remain exempt from ordinary taxation*
" *as long as they continued to belong exclusively to*
" *the company.*"

We claim there is no room for doubt as to what the Legislature *intended* by this act. It intended that these lands should not be taxed as other lands until they were contracted to be sold, conveyed or leased, and that was the understanding of both parties.

An objection made by the defendant intervenor to construing the act to be a contract is that there is no consideration given by the railroad company and that the same rule applies to a contract with the State as does between individuals, that there is no binding contract where the consideration is all on one side.

There is no doubt about the correctness of the principle. It was applied by the Supreme Court of the United States in

Christ Church vs. Philadelphia Co., 24 How., 300.

In that case the Legislature of Pennsylvania passed an act providing that real property of a certain hospital so long as it belonged to the hospital should be exempt. There was no consideration of any kind given therefor and subsequently other laws were passed providing for the taxation of this property. The Court held that the first act was not irrepealable, that it was not a binding contract because there was no consideration for it. There was no obligation on the part of the hospital.

But is that true of the Act of March 3rd ? That act provides that the railroad company shall pay one per cent. of its gross earnings each year for the first three years after thirty miles of road are completed. two per cent. each year for seven years thereafter and three per cent. each and every year thereafter. It is admitted that the company built its road relying

upon this act. Does not that amount to a consideration? Judge GILFILLAN, in the Parcher case above referred to, expressly says that the agreement to pay a percentage of the gross earnings is a sufficient consideration for such a contract, and that the sufficiency of the consideration is a matter for the Legislature to determine.

But it is claimed that the railroad company was under the obligation to pay a percentage of its gross earnings before the act of March 3rd was passed; that it had agreed to do that when it accepted the Act of February 23. An examination of the two acts shows, however, that, by the terms of the first act, the railroad company was only bound to pay a gross-earnings tax after the whole road was complete and in operation, whereas the second act provides, and the company in accepting it, agreed to begin to pay a gross-earnings tax *as soon as thirty miles of the road was completed and in operation.* Here, then, is a new obligation that the company had not assumed before and one that is sufficient to make a contract.

But it is answered, the railroad company is bound to do its share towards supporting the government and must pay such tax as the Legislature sees fit to impose without any agreement on the part of the State; that the State had the right to say that the payment of the gross-earnings tax should commence when thirty miles of road were completed without making any contract with the company, and therefore the company gave nothing when it agreed to do what the State had the right to say that it should do. But is that true in this case? Did the State have the right on March 8 to say that the railroad company should begin to pay a gross-earning tax as soon as thirty miles of road were completed? Had it not before that time already agreed by the Act of February 23, that the gross earnings tax should commence when the whole line of road from St. Paul to Lake Superior was completed? Was not that a contract binding upon the State which could

not be changed without the consent of the company? There were many other considerations for that contract besides the payment of gross-earnings tax, as we have already seen. The State did not have the right on March 8 to provide that the company should begin to pay its gross-earnings tax when only thirty miles of the road was completed, and the agreement of the company to do so was a valuable consideration. But the main consideration was the building of the road. This law was passed as an inducement to the parties interested in the company to build the road, and relying upon the contract with the State the company proceeded to build the road and other persons relying upon the same contract furnished the company money for that purpose.

Moreover, the Minnesota Supreme Court, in *State vs. Luther, supra*, has expressed the opinion that there were considerations running to the State by the terms of the Act of March 8. The opinion on page 160 says: "The second act covers all the ground covered by the "first, making various changes, some in favor of the "State and others in favor of the company, although "as usual in those days mostly the latter."

The cases upon the subject of taxation are collected in the opinion of this Court in

Pearsall vs. Great Northern Ry., 161 U. S., 646; see pages 662-3.

"This Court has had, perhaps, more frequent occa- "sion to assert the inviolability of corporate charters "in cases respecting the power of taxation than in "any other, and in a long series of decisions has held "that a clause imposing certain taxes in lieu of all "other taxes, or of all taxes to which the company or "stockholders therein would be subject, is impaired by "legislation raising the rate of taxation, or imposing "taxes other than those specified in the charter. Thus "in *State Bank of Ohio vs. Knoop, 16 How., 369*, it "was held that where by a general banking law it was

" provided that a certain percentage of dividends " should be set off for the use of the State, and should " be in lieu of all taxes to which the company or " stockholders therein would otherwise be subjected, " this was a contract fixing permanently the amount of " taxation, and that legislation could not thereafter in- " crease it. In this connection it was said by Mr. " Justice McLean: ' Every valuable privilege given by " ' the charter, and which conduced to an acceptance " ' of it and an organization under it, is a contract " ' which cannot be changed by the legislature where " ' the power to do so is not reserved in the charter. " ' The rate of discount, the duration of the charter, " ' the specific tax agreed to be paid, and other pro- " ' visions essentially connected with the franchise, " ' and necessary to the business of the bank, cannot, " ' without its consent, become a subject for legislative " ' action.' "

It is true the Supreme Court of the United States reiterates the principle that no contract can be presumed and that when a contract is claimed it must be established.

The oftener and more emphatically the Court emphasizes the proposition that a contract of immunity from taxation cannot be implied the more the Court impliedly emphasizes the proposition that when such a contract exists it cannot be impaired.

In *Farrington vs. Tennessee*, 95 U. S., 679, it was held that the charter of a bank granted by the Legislature of Tennessee in 1858, which provided that the bank " shall pay to the State an annual tax of one-half " of one per cent. on each share of the capital stock " subscribed, which shall be in lieu of all other taxes " constituted a contract between the State and the bank, limiting the amount of tax on each share of the stock, and that a subsequent revenue law of the State, imposing an additional tax on the shares in the hands of stockholders, impaired the obligation of that contract and was void.

In *New Jersey vs. Yard*, 95 U. S., 104, the Legislature of New Jersey had passed an act in 1865 with regard to the Morris and Essex Railroad Company to the effect that the tax of one half of one per cent., provided by the original act of incorporation to be paid to the State whenever the net earnings of the company should amount to seven per cent. upon the cost of the road, should be paid at the expiration of one year from the time when the road of the said company should be opened and in use to Phillipsburgh and annually thereafter, "which tax shall be in lieu and "satisfaction of all other taxation or imposition what-"soever by or under the authority of the State or any "law thereof; provided that the section shall not go "into effect or be binding upon the company until it, "by an instrument duly executed under its corporate "seal and filed in the office of the secretary of State, "shall have signified its assent hereto, which assent "shall be signified within sixty days after the passage "of the act, or the act shall be void."

In 1873 an act was passed imposing a more burdensome tax. The Court held that the latter act was a violation of a contract and was unconstitutional and void. The Court says, by Mr. Justice MILLER, at page 115:

"1. The Legislature was not willing to rest this "contract in the usual statutory form alone, depending "for its validity as a contract upon some action of the "corporation under it to bind it to its terms; but they "required of the company a formal written acceptance "within sixty days, or else it became wholly inopera-"tive. The company duly executed this acceptance. "There was, then, the complete formal, written instru-"ment evidencing this contract, signed by the presid-"ing officers of the two houses of the New Jersey "Legislature, and the Governor, for one party, and "the president and secretary and seal of the railroad "company, of the other party. It does seem as if the "legislative intention was to make a contract in the

"same manner and on the same terms of equal "obligation as other contracts are made, and not to "pass a statute which it could repeal or amend the "day after it was signed by the parties. * * * "Can it be believed that it was intended by either "party to this contract that, after it was signed by "both parties, one was bound forever, and the other "only for a day? That it was intended to be a part "of the contract that the State of New Jersey was, at "her option, to be bound or not? That there was im- "plied in it, when it was offered to the acceptance of "the company, the right on the part of the Legislature "to alter or amend it at pleasure? If the State in- "tended to reserve this right, what necessity for ask- "ing the company to accept in such formal manner "the terms of a contract which the State could at any "time make to suit itself?

* * * * * *

"3. The language used by the Legislature is incon- "sistent with the right claimed.

"'Which tax (one-half of one per cent.) shall be in "'lieu and satisfaction of all other taxation or imposi- "'tions whatsoever by or under authority of this "'State, or any law thereof.' Is there here to be im- "plied 'except such laws as may hereafter be enacted?' "Such a provision would be to nullify the whole con- "tract. How could the tax be in lieu and satisfaction "of all other taxation, if other taxes might be imposed "next day? Or how can it be said to be in satisfac- "tion of all taxes whatsoever under authority of the "State, if the State could immediately impose another "and more burdensome tax?

"We admit the force of the doctrine that, when it "is asserted that a State has bargained away her right "of taxation in a given case, the contract must be "clear, and cannot be made out by dubious implica- "tions.

"But of the existence of the present contract there "is no doubt. Its meaning and its terms are clear

" enough, and, taken alone, no one denies but that it " is a contract which would be protected by the Con- " stitution of the United States. The implication is " of a right to revoke it, and comes from the other " quarter, and is one which we do not think exists by " fair construction, and which we do not feel at liberty " to import into the contract to defeat its manifest " purpose."

See, also,

Jefferson Branch Bank vs. Skelly, 1 Black, 436, and cases cited.

FIFTH POINT.

The constitutional amendment of November 8th, 1871, being Section 32a of Article 4 of the State Constitution, was an interpretation and a ratification of the contract in Chapter 8 of the Special Laws of 1865, and said amendment does not confer upon the Legislature the right to amend or repeal the Acts of 1865 without the consent of the railroad company.

If any question exists as to the constitutionality of the contracts of 1865, we further submit that they were validated by the constitutional amendment adopted in 1871, which appears as Section 32*a* of Article 4 of the State Constitution, which provides that any law repealing or amending any law providing for the payment of a commuted tax in lieu of other taxes by a railroad company shall, before taking effect, be submitted to the voters.

We urge, further, that this was not only a ratification of the statutes passed subsequent to the adoption

of the State Constitution, and a recognition of their validity, but was a construction placed by the people upon them. If the laws passed before the amendment of 1871 were void, neither the State nor the companies would be bound by them, and the amendment was unnecessary.

State of Minn. *ex rel.* Jas. M. Marr vs. Luther Co. Auditor, 56 Minn., 156.

This was an application for a peremptory writ of mandamus, made by the relator in Aiken County, directing the Auditor of that county to place upon the tax list certain land of the St. Paul and Duluth Railroad Company for the year 1893, and decided absolutely and squarely the questions which are presented in the case at bar. The opinion of the Court is delivered by Judge MITCHELL, and it was decided that Chapter 8 of the Special Laws of 1865 was constitutional, and that a contract between the State and the company, which insures to the railroad company a continuance of the right to have the commuted form of taxation, is provided in the act.

The Court said, on page 161:

"In the light of experience it is probably very unfortunate that the Legislature, in dealing with the various land-grant railway companies, did not impose some reasonable limitation as to the time during which this immunity of the granted lands from ordinary taxation should continue, but if the State made injudicious contracts the mistake is remediless now."

The Court further said, in discussing the question as to whether the lands of the company were included in the commuted form of taxation, on page 160:

"Neither is the question whether there is a grant of immunity from taxation, but whether a commuted system or mode of taxation has been provided. It is common error, in construing statutes like the present, to assume that, because the commuted tax

" is fixed with reference, and is wholly derived from " the gross earnings of the road, therefore the land " is exempt from taxation altogether. The percent- " age of the gross earnings is paid as taxes on both " the railroad and the granted lands, and, although " derived wholly from the former, is a commutation " tax alike on both."

Page 164:

" There is not in the history of the State a single " grant of lands to aid in the building of a railway " where this system of commuted taxation has not been " adopted, and we have not found an instance prior to " the adoption of the constitutional amendment of " 1871 (Const., Art. 4, 32*a*), where a commuted system " of taxation was provided that did not apply to a land " grant as well as to the railroad property. This " amounted to a legislative construction of the consti- " tution, which of itself would be entitled to great " weight.

" In this situation of things the people adopted a " constitutional amendment (Const., Art. 4, Sec. 32*a*) " ordaining that 'any law providing for the repeal or " 'amendment of any law or laws heretofore or here- " 'after enacted which provides that any railroad com- " 'pany now existing in this State, or operating its road " 'therein, or which may be hereafter organized, shall, " 'in lieu of all other taxes and assessments upon their " 'real estate, roads, rolling stock and other personal " 'property, at and during the time and periods therein " 'specified, pay into the treasury of this State a certain " 'percentage therein mentioned of the gross earnings " 'of such railroad companies now existing or hereafter " 'organized shall, before the same shall take effect and " 'be in force, be submitted to a vote of the people of " 'the State, and be adopted and ratified by a majority " 'of the electors voting at the election at which the " 'same shall be submitted to them.'

" *This language must have been selected and this* " *amendment adopted with reference to the existing*

" *legislation and the general legislative policy to which*
" *we have referred, and, read and construed in that*
" *light, it amounts to a clear recognition of the validity*
" *of existing laws providing for this commuted system*
" *of taxation of railroad property and lands and of*
" *legislative power to enact such laws for the future.*
" *If it did not refer to this, there was nothing to which*
" *it could refer. It is, by necessary implication, a*
" *validation of past legislation of that kind, and a grant*
" *of power to enact it in the future.*"

See *County of Stevens vs. St. P., M. & M. R. R. Co., 36 Minn., 472,* as foreshadowing this construction, and as indicating that that was the view then entertained by the Court.

Now, let us see what was to be validated by the amendment.

The only possible constitutional objection to the Legislature entering into a contract with the company for a commuted system of taxation was Sections 1 and 3 of Article 9, and this went, not to the general power to make a contract, but to provide a commuted system of taxation; and, if that was validated, the entire contract was validated not only upon principle, but upon the rule of law that a ratification of a contract made by an agent without authority is a ratification of the whole contract. As was said by the Supreme Court of Wisconsin in the case of

Strasser vs. Conklin, 54 Wis., 102:

" No rule of law is more fully established than the
" rule that, if one, with full knowledge of the facts,
" accepts the avails of an unauthorized treaty made in
" his behalf by another, he thereby ratifies such treaty,
" and is bound by its terms and stipulations as fully
" as he would be had he negotiated himself. Also, a
" ratification of a part of an unauthorized transaction
" of an agent is a confirmation of the whole."

This amendment refers to laws, which, for the sake of the argument, barring authority of the Legislature,

are absolute, complete, full contracts, perpetual and inviolable.

Take the contract under which the St. Paul and Duluth claims in this case. There the consideration is expressed, provision is made for its acceptance, it is declared to be binding upon the State and company, if accepted, and, as a matter of fact, was accepted within the time provided. Now, what portion of that law has been validated by the amendment of 1871?

Clearly the only vice of that legislation, if any, was in providing a commuted system of taxation in view of the limitations claimed to exist by virtue of Sections 1 and 3 of Article 9 of the State Constitution; and if that particular element has been validated, not only under an elementary rule of law would the entire contract be validated, but, the unauthorized portion being validated, the contract would, *ipso facto*, become a valid contract as to its entire provisions.

Now, the amendment of 1871 is, so far as it provides for a submission to the voters, a mere limitation; it could not give the people the power to ratify an act of the Legislature which impaired the obligation of a contract; the limitation "shall, before the same shall "take effect," must be read in the light of the legal rights of the parties to the contract, and applies as a limitation upon the power of the Legislature, by and with the consent of the companies, to modify the terms of the contract, whether the same was entered into before the adoption of the State Constitution, or subsequent thereto.

It is a part of the history of the legislation involving the acts providing for a commuted system of taxation for railroad companies, that such acts had been frequently amended, and, as suggested by the Court in the Luther case, sometimes in the interest of the State, and sometimes in the interest of the company, and the plain and obvious intent of the amendment of 1871 is a recognition of the validity of these contracts, and the placing of a limitation upon the power of the Legis-

lature to further change or modify them with the consent of the companies, except such modification be ratified by the voters.

We sometimes get a clearer view of a proposition by an illustration:

A is engaged in business; B makes a contract with C, ostensibly for and in the name of A for the purchase of commodities, present and future, upon a definite credit upon each purchase. Assume that B had originally no authority to make this contract; A, however, after the contract is brought to his notice, declares to both B and C that B shall make no modification of the contract except upon his (A's) consent. This is a recognition, or rather, an adoption of the contract made by B. B then attempts to change the time of credit for the goods which he has purchased, without the consent of C to such change, and A claims the right to ratify the change, and that his agreement that no contract made by B should be modified except by A's consent, means that A can arbitrarily, by consenting to B's modification, modify a contract despite the protests of the other party.

It would seem as though the statement of the proposition is sufficient to refute it.

Here, the Legislature makes a contract, in form, with the company, which is accepted and has every element of a complete, express contract, including consideration, except that it is claimed the Legislature exceeds its authority. The people, being the principal, declare that the Legislature shall never modify that contract, except upon their consent; this declaration amounts to and is held by the Court to be an adoption and validating of the act of the Legislature; and then it is asserted that after the agent has been clothed retroactively, with authority to make the contract—for that is what adoption means, as well as ratification—the principal can again modify the contract in opposition to the protests of the other party.

It is claimed by defendant in error that there is to

be found in this amendment an intention on the part of the State to reserve the right to change and modify those contracts whenever it sees fit, and that the consent of the railroad companies interested was not essential to making such change, but we feel certain that a critical examination of the amendment in the light of the condition of the legislation upon the subject of taxation of railroads at the time of its adoption will make it clear that the purpose and intent of this amendment was to place a limitation upon the power of the Legislature to consent to any changes in the contracts with the railroad companies for the payment of a gross-earnings tax without ratification by vote of the people, and that there was no intention to claim that the State had the right to, or to reserve to the State the right to, make any changes in those contracts *without the consent of the railroad companies interested.*

Before considering the language of the amendment, let us first review the situation as to railroads in this State and the provisions for taxing the same as they existed in 1871 at the time it was adopted.

In 1870 there was no railroad in operation in Minnesota that had not been built by the aid of a grant of public land. In 1873 there were less than one hundred miles of railroad in operation that had not been assisted by a land grant. In 1871 there was no general law providing for the payment of a gross-earnings tax in lieu of other taxation, and yet every railroad operated was paying such a tax, and none of the lands granted to the various railroad companies were subject to ordinary taxation; but the State and the territory which preceded it had at various times entered into separate contracts with each of the railroad companies providing that the company should pay to the State a certain percentage of its gross earnings, and in almost every, if not every, such law there was a provision that the granted lands of such railroad company should be exempt from ordinary taxation until sold or contracted to be sold by the company.

This method of dealing with taxation of railroad companies was commenced by the territory in 1857 before any railroad had been built in the Territory, now the State of Minnesota. Contracts were then made with four companies providing that they should pay three per cent. of their gross earnings in lieu of all other taxation, and that the public lands granted to these companies should be exempt from ordinary taxation until sold by the companies. The four companies with which such contracts were made were usually termed the land-grant companies, and are as follows: Minnesota and Pacific Railroad Company, Transit Railroad Company, Root River Valley and Southern Minnesota Railroad Company and the Minneapolis and Cedar Valley Railroad Company.

Chap. 1, Laws of Extra Session of 1857.

These contracts with the land grant companies and their successors were re-enacted by the State after it was organized, and in some cases their provisions were changed so as to be more favorable to the railroad companies. These changes were doubtless made at the instance and with the consent of the railroad companies interested (see Chapter 2, Special Laws 1861; Chapter 17, Special Laws 1862, and Chapter 2, Special Laws 1863, as to Minneapolis and Cedar Valley Railway Co.; Chapter 18, Special Laws 1862; Chapter 1, Special Laws 1863; Chapter 1, Special Laws 1864, as to Root River Valley and Southern Minnesota Railroad Company and its successors; Chapter 4, Special Laws 1864; Chapter 6, Special Laws 1865; Chapter 52, Special Laws 1870, as to the Minnesota and Pacific Railroad Company and its successors, and Chapter 10, Special Laws 1865, as to the Winona and St. Peter Railroad Company, successor of the Transit Railroad Company.)

After the organization of the State and prior to 1871 similar contracts had been made with other companies providing for a payment of a gross earnings tax in lieu

of all other taxation and for the exemption of all granted lands from ordinary taxation until sold, or contracted to be sold, by the railroad company; Chapter 12, Special Laws 1866, and Chapter 9 of Special Laws of 1867, making such a contract with the Hastings and Dakota Railroad Company, and Chapters 2 and 8, Special Laws of 1865, being the acts under consideration referring to the taxation of the Lake Superior and Mississippi Railroad Company, and Chapter 65 of Special Laws of 1870, making a similar contract with the Northern Pacific Railroad Company.

It thus appears that the State Legislature had assumed the right to deal with the railroad companies by this method of taxation and by making separate contracts with each company.

In the year 1871 the following companies paid a gross earnings tax in the amounts as follows:

Lake Superior & Mississippi	$2,651 10
St. Paul & Sioux City R. R. Co.	7,356 85
Southern Minnesota R. R. Co.	5,355 45
Milwaukee & St. Paul R. R. Co.	21,019 37
Hastings & Dakota R. R. Co.	73 69
St. Paul & Chicago R. R. Co.	192 10
First Division St. Paul & Pacific R. R. Co.	9,549 30
Winona & St. Peter R. R. Co.	10,256 32
	$56,454 18

This includes all the railroad companies that were operating at that time. Of these companies all except two companies—the Lake Superior and Mississippi Railroad Company and the Hastings and Dakota Railroad Company—had succeeded to the franchises, or a part of the franchises, of some one of the original land-grant railroads and had the right to pay certain percentage of their gross earnings in lieu of all other taxation, and their granted public lands were exempt from ordinary taxation by virtue of the contracts made in 1857 with the Territorial Legislature. That those

contracts could not be changed *without the consent of the railroad companies* was well understood in 1871, for only two years before that time, 1869, the case of *First Division of St. Paul & Pacific R. R. Co. vs. Parcher* had been decided by the Supreme Court of the State.

This was the situation in 1871 when the amendment to the Constitution was adopted, and as that amendment applies to railroad companies generally, it was aimed principally at the successors of those original land grant railroads which had assumed contract rights under the territorial legislation, which, it was well known, could not be changed without the consent of the companies interested.

Now let us look at the language of the amendment and see if there is anything in it that leads to the conclusion that the people tried, at that time, to assume the right to change those contracts *without the consent of the railroad companies.*

It reads as follows: *Art. 4, Sec. 32a.*

"Any law providing for the repeal or amendment of "any law or laws heretofore or hereafter enacted, "which provides that any railroad company now exist- "ing in this state, or operating its road therein, or "which may be hereafter organized, shall, in lieu of "all other taxes and assessments upon their real "estate, roads, rolling stock and other personal prop- "erty, at and during the time and periods therein "specified, pay into the treasury of this state a certain "percentage therein mentioned of the gross earnings "of such railroad companies now existing or hereafter "organized, shall, before the same shall take effect and "be in force, be submitted to a vote of the people of "the state, and be adopted and ratified by a majority "of the electors of the state voting at the election at "which the same shall be submitted to them."

The plain and obvious meaning of this language is that thereafter the Legislature should not have the power to change the contracts with the railroad com-

panies providing for payment of a gross earnings tax without express consent of the people generally. It was intended as a check upon the Legislature to prevent it from changing those contracts to make them more favorable to the railroad companies. There is nothing in the language that indicates that the Legislature could change those laws without the concurrence of the railroad companies interested, and it would have been surprising indeed if any such idea had been contained therein, for it was generally known then and ever since that time it has been, and is now generally, admitted that the State Legislature could not amend or change those laws enacted by the territory providing for payment of gross earnings tax and accepted by the companies *without the consent of the company interested.*

But this amendment was evidently intended to apply to all laws, whether enacted by the Territory or State, in the same manner, and apparently there was at that time no disposition on the part of the State to question the validity of any of them, but, on the other hand, a general desire to prevent any change being made in any of them without the express consent of the people.

There is no reason why the ordinary principles of law applicable to ratification should not apply in this case. It is very much the same as any other principal ratifying the unauthorized contract made by his agent, by treating it as valid. The Legislature is the agent of the people, the constitution is a limitation of the authority granted to the Legislature. It is claimed that the Legislature has exceeded that authority in making the contracts in question with the railroad companies. These contracts are published and are generally known. The people by an amendment to the Constitution say those contracts shall not be changed without the express consent of the people expressed by popular ballot.

If an ordinary principal, after becoming aware that his agent had exceeded his authority in making a contract on behalf of the principal, declared to the agent and the contracting party that such contract should not be changed without his express consent, it would hardly be claimed that thereupon the contract was merely a contract at the will of the principal and could be changed by him at any time without consent of the contracting party. Yet that is the position of the respondent in this case.

Again, the St. Paul and Duluth Railroad Company and its predecessor, the Lake Superior and Mississippi Railroad Company, have been paying a gross-earnings tax for nearly thirty years, and during the same time the State has received said percentage of its gross earnings. The railroad company has assumed that it was paying this tax under the provisions of Chapter 8 of the Special Laws of 1865. This Court has held that it had the right to pay such percentage under that law; that said law was a valid law *(State vs. Luther, supra)*. But this law on its face is a contract that can only be changed by consent of both parties to it.

The respondent below, defendant in error here, claims, as we understand, that while it is true that these companies have paid said gross-earnings tax, that prior to 1871 such payment was illegal, and since that time the payment has been legal by reason of the constitutional amendment of 1871. But the constitutional amendment did not provide for any new scheme of taxation for any railroad. The tax has been paid, not by virtue of the amendment, but by virtue of the law of 1865. The effect of the constitutional amendment was to render that law valid.

The position of the respondent below, defendant in error here, is that this constitutional amendment did not merely ratify and confirm the law, but that it amended and changed the law in some way so as to take away from it its quality of being a contract.

We fail to find anything in the constitutional amendment that can be construed to have any such effect. It certainly does not expressly repeal or change any law, nor is there anything in the amendment that is inconsistent with the law being a contract; but, on the other hand, it must be admitted that the amendment applies equally to many other laws that are conceded to be contracts. The plain purpose of the amendment was to make it more difficult in the future to change such contracts, and by adopting the amendment the people impliedly admitted such laws to be valid.

Whatever may have been the status of the laws under which the granted lands of the St. Paul and Duluth Railroad Company were exempted from ordinary taxation prior to the constitutional amendment of 1871, since the adoption of that amendment they have been binding contracts which the State could not change without consent of the railroad company, and therefore Chapter 168 of the General Laws of 1895 cannot apply to the granted lands of the St. Paul and Duluth Railroad Company.

In appearance this amendment was intended to restrain the Legislature in the exercise of the power of amending or repealing both classes of statutes. All these statutes were contracts upon their face, evidently intended, both by the Legislature which had passed them and the railroad companies which had accepted them, to be valid and obligatory contracts, irrevocably binding except by consent of both parties. It seems to satisfy the requirements of this amendment to suggest that it was intended only to restrain the Legislature, representing the State, one of the parties to any one of these contracts, in exercising any power to change such a contract, and that its language does not touch the vital question, whether or not the Legislature was clothed with power to represent the other party to such a contract and to define its rights thereunder? No claim is made that the amendment directly states that the future existence of power in the

Legislature to act for both parties is made a condition of ratifying these contracts. It is only claimed that it is implied in this amendment that the Legislature shall have such a power, the existence of which is directly opposed to the language of the statutes themselves, which the Supreme Court of Minnesota has held are ratified and confirmed by these statutes. It is obvious that the conferring of power to change the contracts without the consent of the railroad companies is directly contradictory of their ratification, a condition in repugnance to the grant, so to speak, and tending to destroy its effect. Such a provision, under ordinary rules of construction, should not be read into the amendment or considered to exist merely by implication.

But there is another consideration which is fatal to the existence of this implied power in the Legislature to act for both parties to these ratified contracts. The amendment operates alike upon the statutes passed before the adoption of the Constitution and those adopted after that date. The first class are admitted by counsel for defendant in error to be valid contracts which could not be disturbed by the Legislature, and which the people of the State could not affect by conferring either directly or impliedly upon the Legislature by a constitutional amendment the power to amend or repeal. To sustain the position taken, counsel for defendant in error seems to argue that this amendment was only intended to limit the power of the Legislature to represent the State in the first class of contracts, but was intended in the second class of such contracts, not only to effect such a limitation, but also to confer upon the Legislature the right to affect, even to destruction, the rights of the other parties, the railroad companies, to such contracts.

Such a construction is impossible. We must hold either that the amendment intended to give the Legislature power to amend or repeal the first class of statutes, an utterly impossible construction in the face of the admitted validity of the first class of statutes,

or we must accept the conclusion that neither class of statutes was intended to be subject to amendment or repeal without the consent of both parties to the contract.

The provisions of the Constitution of Minnesota with respect to equality and uniformity can be successfully appealed to in favor of the latter construction of the amendment. Such provisions, while they do not control the Legislature in its right to classify property, do impose upon it the necessity that parcels of property of the same class shall be taxed by the rules of equality and uniformity. It is obvious at a glance that the view of the amendment contended for by the defendant in error would give the Legislature the power to violate these rules of equality and uniformity, and Chapter 168 of Laws of 1895, if put into operation, will clearly violate these rules. The railroad companies who hold contracts as to taxation made by the territorial governments will pay upon gross earnings alone, while those who hold what they have supposed to be contracts with the State governments will pay, not only on gross earnings, but a second tax upon the land grant lands upon an *ad valorem* basis. It cannot be supposed that the people of the State of Minnesota intended by the amendment in question to confer upon their Legislature the implied power to flagrantly violate the provisions of the Constitution (Sections 1 and 3, Article IX.) with respect to equality and uniformity of taxation.

SIXTH POINT.

Chapter 168 of the Laws of the State of Minnesota of 1895 impairs the obligation of the contract and is void under the provision of the Federal Constitution.

That the Act of the State of Minnesota passed in 1895 impairs the obligations of the contract and is void under the provisions of the Federal Constitution follows as a necessary corollary from the propositions above laid down. It undertakes to take away the rights granted under the statutes of the State, and it sets at naught and nullifies the deliberate and solemn contract entered into between the State and the railroad companies by which a fixed percentage of earnings was substituted for the ordinary method of taxation and by which the railroads were relieved from any further or other taxation upon their railroad or the lands granted to them in aid of the construction of their roads. The decision, therefore, of the Supreme Court of Minnesota, in this case, was clearly erroneous and should be reversed.

WILLIAM B. HORNBLOWER,
JULIEN T. DAVIES,
EMERSON HADLEY,
Of Counsel for St. Paul and Duluth Railroad Company, on behalf of Plaintiff in Error.

APPENDIX.

Special Laws 1861, Chapter 1, Act March 8th, 1861.

AN ACT,

To amend an Act entitled an Act to incorporate the Nebraska and Lake Superior Railroad Company

Be it enacted by the Legislature of the State of Minnesota.

SECTION 1. That the act of the Territorial Legislature of Minnesota, entitled an Act to incorporate "The Nebraska and Lake Superior Railroad Company," approved May 23rd, 1857, be and the same is hereby amended and continued, so that it shall read as follows: That Lyman Dayton, John McKusick, Henry A. Swift, Richard Chute, Dwight Woodbury, C. T. Stearns, Thomas Clark, Levi Butler, Sidney Luce, E. O. Hamblin, A. F. Hawley and A. G. Chatfield, of the State of Minnesota, Anson Blake, Erastus Corning, Orville Clark, of the State of New York, E. B. Ward and A. H. Hanchett of Michigan, and their associates, successors and assigns be and they are hereby constituted a body corporate and politic, by the name and style of "The Lake Superior and Mississippi Railroad Company," and by that name and style shall be capable in law of taking, purchasing, holding, leasing, selling, mortgaging, and conveying real estate and property, whether real, personal or mixed, so far as may be necessary or convenient for the purposes hereinafter mentioned, and in their corporate name may sue and be sued, plead and be impleaded, contract and be contracted with, and may have a common seal, which they may alter or renew at pleasure, and may have and exercise all powers, rights, privileges and immunities which are or may be necessary or convenient to carry

into effect the purposes and objects of this Act and of the said corporation.

SEC. 2. That said corporation is hereby authorized and empowered to survey, locate, construct, maintain, use and operate, and at pleasure to alter the line thereof, a railroad with one or more tracks or lines of rails, to commence at some convenient point or place within the State of Minnesota, at the west end of Lake Superior, and running thence by the most feasible route within this State to some point on the Mississippi, with the right to extend the same to the Minnesota river; and also with the right to construct a branch from the main line to the navigable waters of the St. Croix, together with all proper stations, depots, turn-outs, engines, cars and other appurtenances and furniture of a railroad; *Provided*, The said Company shall commence the grading and construction of said road at Superior, and continue the construction thereof toward the Mississippi river, and shall first build their said main line to said Mississippi river.

SEC. 3. The capital stock of said corporation shall be five million dollars, and shall be divided into shares of one hundred dollars each, which shall be deemed personal property, and shall be transferable on the books of said corporation, and the directors may increase the capital stock thereto to such amount as may be necessary or convenient to carry into effect all the rights and privileges hereby granted, not exceeding the whole cost of the road and its appurtenances, and the shares of any increase of stock shall be the same and transferable in the same manner as the shares of the original stock.

SEC. 4. The above named persons, or any of them, are hereby authorizied to open books for receiving subscriptions to the capital stock of said company, which books may be opened at such times and places as a majority of said corporators may determine, by giving twenty days' notice in two of the newspapers published in St. Paul, and also in the State paper at the City of

Albany, New York, of the times and places where said books will be opened; said books may be kept open thirty days, or until the sum of one hundred and fifty thousand dollars of the capital stock of said company shall be subscribed. And as soon as said sum of one hundred and fifty thousand dollars shall have been subscribed to the capital stock of said company, and five per cent. of the amount so subscribed paid in to such person or persons as may have been appointed to receive the same by the persons named in the first section of this Act, who are hereby authorized to make such appointment, the above named persons, or a majority of them, may give like notice of a meeting of the stockholders at such time and place as they may deem expedient, to choose directors; and if at such time and place the holders of one-half or more of the said stock shall attend, either by person or by lawful proxy, they shall proceed to choose from the stockholders by ballot, seven directors, at least three of whom shall reside in the State of Minnesota, each share of the capital stock entitling the owner to one vote; and at such election, the persons named in the first section of this Act, or those appointed by them, (which power is hereby conferred upon them), or any three of them, if no more be pesent, shall be inspectors of such election, and shall certify in writing, signed by them, or a majority of them, what persons are elected directors; and such inspectors shall appoint the time and place of holding the first meeting of directors, at which meeting a majority of directors so chosen shall be competent to transact all business of the company; and thereafter all elections of directors shall be made annually, at such time and place, and in such manner as may be determined upon by the board. Said directors shall, at their first meeting, elect one of their number president, and shall appoint a treasurer, secretary, and such engineers and other officers as they may think necessary, and shall fix their compensation for the services to be rendered,

and may require adequate security for the performance of their respective trusts.

SEC. 5. The board of directors may, at such times as they may deem proper, assess upon the stock subscribed, an installment of not less than two and not more than ten per cent., and require payment of such installment within a reasonable time, not less than thirty days from notice thereof, under penalty of forfeiture of the stock on which the assessment was made or otherwise ordered. They may also make all needful rules, regulations and by-laws, touching the business of said company, determine the number of tracks and railways upon said road, and the width thereof, and the description of carriages to be used thereon, regulate the amount of tolls and manner of collecting the same, and fix the penalties for the breach of such rules, regulations and by-laws, direct the mode and condition of transferring the stock of said company on the books thereof, and the penalties provided for by the said by-laws, may be sued for by any person authorized thereby in the name of said company, and be recovered in any action of debt before any court having jurisdiction of the amount.

SEC. 6. The said company may construct the said railroad across any public or private road, highway, stream of water or water-course, if the same be necessary; *Provided*, That the same shall not interfere with navigation; but said company shall return the same to their primitive state, or in a sufficient manner so as not to impair the usefulness of such road, highway, stream of water or water-course, to the owner or to the public.

SEC. 7. The said company shall have the right of way upon and may appropriate to its own use and control, for the purposes of the said road and its appurtenances, land not exceeding two hundred feet in width, throughout its entire length, except in cases where a borrowing pit or waste bank is necessary for the construction thereof; in which cases such additional land

may be appropriated by said company as may be necessary, and said corporation may, by its engineers, agents and contractors, enter upon and take possession of and use all and singular any lands, timber, streams and materials of any and every kind, for the purpose of making the survey and fixing the location of said railroad, and all stations, depots, turnouts and other things necessary, proper or convenient for the same, and the full use and protection thereof, and of all its appendages and appurtenances. All such lands within the limits of the line of said railroad, and which may now belong to this State or hereafter may be acquired thereby or by the State in which said line may be, are hereby granted to the said corporation for such purposes, to be by them held and possessed, so long as the same shall be used for such purposes; *Provided*, That in case any of the lands which have been reserved, or shall hereafter be reserved or granted for the use of schools, shall be included in the limits of said line, the corporation shall pay therefor such sum, not less than one dollar and twenty-five cents per acre, as the Governor of the State shall fix, which sum shall be paid to the Governor, and shall belong to the school fund of this State.

SEC. 8. The said corporation may take and hold for the said purposes or any of them, such additional lands as may be requisite or convenient therefor; but unless such lands shall be purchased of, or voluntarily given by the owners thereof, full and proper compensation therefor shall be made by said corporation to the owner or owners thereof, which compensation shall be ascertained and determined in the manner following:

The said corporation may present to any court in the judicial district in which the lands or real estate proposed to be taken shall be situated, having jurisdiction competent to entertain, adjudicate and determine questions of title to real estate, a petition signed by some authorized agent or attorney thereof, describing with reasonable certainty and accuray by map,

plat, survey, or otherwise, the lands or real estate so proposed or required to be taken; and setting forth the name of each and every owner, incumbrancer, and other persons interested in the same or any part thereof, so far as the same can be ascertained by the legal records affecting the same, and by view of the premises, or other inquiry, touching the occupation thereof, and praying the appointment of three competent disinterested persons as commissioners to ascertain and determine the compensation to be made to said owner or owners respectively, and to all tenants, incumbrancers and others interested, for the taking or injuriously affecting said land or real estate. A copy of such petition, with a notice of the time and place, when and where the same shall be presented to the court, shall be served on each and every person named therein as owner, incumbrancer, tenant, or otherwise interested therein, at least ten days previous to the time designated in such notice for the presentation of such petition. Such service shall be made by delivering such copy of the petition and notice to each of the persons so named therein, if a resident of this State, or in case of the absence of such person, by leaving such copy of petition and notice at his or her usual place of abode, with some person of sufficient age and understanding to comprehend the object thereof, which shall be communicated to such person, with a request to deliver the same to the individual for whom it is thus left, at the earliest opportunity, and if an infant or a person of infirm mind, then by delivering the same to the guardian of such person. In case there shall be any persons named in said petition who are not residents of this State, upon whom service cannot be had in the manner above prescribed, a notice stating briefly the objects of the petition, a description of the lands proposed to be taken, and the time and place of presenting the petition to the court, and directed to such person or persons, shall be published in the newspapers printed

nearest the location of such lands, and in a newspaper published at the seat of government of the State in which the lands shall be situated, once in each week for six weeks successively, previous to the time designated for presenting such petition. The court to whom such petition shall be presented, shall not make any order for the appointment of commissioners to ascertain and determine the compensation to be paid to any owner or person interested, who shall not appear in person or by attorney, except upon proof by affidavit and to the satisfaction of the court, of the service of the petition and notice, in the manner hereinbefore prescribed, but may do so upon the appearance of the party, or upon proof of service in the absence of a party. The court may upon the application of said corporation or of any party interested, for reasonable cause, adjourn the proceedings from time to time, and may order new and further notice to be given to any party whose interests may be affected thereby. When the court shall have satisfactory proof that all parties interested in any parcel of land have been duly served with the petition and notice in the manner herein prescribed, and of the nature and extent of the interests of each and every party in the same, the court may make an order, to be recorded in the minutes thereof, appointing three disinterested competent persons commissioners to ascertain and determine the amount to be paid by the said corporation to each of such persons as compensation for his interest or estate in such parcel or parcels of land and specifying the time and place of the first meeting of such commissioners.

The said corporation shall without delay procure and deliver to each of said commissioners a copy of such order. Before the said commissioners shall enter upon the discharge of their duties, they shall respectively take and subscribe an oath that they shall faithfully and impartially, discharge their duties as commissioners, to ascertain and determine the compensation to be paid

by the said corporation to the respective claimants for lands or interest in lands to be taken for the use of said company. Such oath may be taken before any officer authorized by law to administer oaths. Whenever the place of any commissioner shall become vacant, the court may upon such notice to the parties as he may prescribe, and by like order supply such vacancy by the appointment of another person as such commissioner, who shall be in like manner served with a copy of the order appointing him, and take the oath. The commissioners shall meet at the time and place specified in the said order, and when met, and all present, may proceed with the hearing of the proofs and allegations of the parties and are hereby authorized to administer oaths to witnesses before them.

The commissioners may, as the exigency or convenience of any case shall require, adjourn from time to time and to such place as may in their judgment be most conducive to the purposes of their investigation. No proceedings shall be had by said commissioners unless all of them be present, except to adjourn, but any and every question submitted to them may be decided by a majority, and a report by a majority shall be valid. The said commissioners shall keep minutes in writing of all their proceedings, in which they shall enter the time and place of their meetings and adjournments, the names of parties appearing before them, and whether in person or attorney, the substance of the testimony of witnesses sworn and examined before them, and all disputed questions which shall be submitted to them, and their decisions thereon. In estimating damages or compensations to be paid to any claimants, the said commissioners shall take into consideration the benefits to accrue to the claimant by the construction of the said railroad, and allow such benefits by way of a reduction of the damages which such claimant may sustain thereby, and report only the balances of the damages but no balances shall in

any case be reported in favor of the company. They shall make and sign a report which shall contain a description by metes and bounds, survey, map or plat of each separate parcel or points of land proposed to be taken by the said company for its use, the compensation for which they shall ascertain and determine, and the amount, if anything, to be paid by said company to each person whose interests are to be affected thereby.

They shall as soon as their report shall be made attach thereto their minutes and oath of office, and file the same in the office of the clerk of the court appointing such commissioners, and notify the parties interested in such report that the same is made and filed. In case the said company, or any person interested in such report, shall deem the same unjust in any manner affecting the amount of the compensation to be paid, the company or such party may appeal therefrom at any time within twenty days after the service of notice of filing of such report. The party appealing shall file a notice of such appeal with the clerk of the court, with whom the report shall have been filed, stating the grounds of the appeal, and serve a copy thereof on the opposite party within the time above prescribed for taking an appeal, and by giving a bond in such penalty as the said court shall prescribe, conditioned to prosecute the appeal without delay, to abide the order the court may make on such an appeal, and to pay the costs if he shall fail therein. Upon the filing of the notice and bond for appeal with proof by affidavits of service of such appeal as above prescribed, all further proceedings on the report shall be stayed until the further order of the court and the cause upon such appeal shall be entered, proceeded in and determined in the same manner as cases on appeal from courts of justices of the peace; and in case the appeal shall involve the determination of any question of fact the same shall be tried by a jury unless a jury shall be waived by both parties. The report of the commissioners shall

be final and conclusive, unless appealed from in the manner above prescribed. Whenever the company shall take appeal from any report of the commissioners, such appeal shall not stay the work on the road or other structure on the lands involved in the appeal: *Provided*, The company shall deposit in court the amount awarded by the report appealed from, to abide the order to be made by the court on appeal. An appeal from any report of commissioners by or on the part of any person interested in any parcel of land or real estate, proposed to be taken by the company, shall stay all work on the road or other structure on the premises in question, unless the company shall deposit in court the amount of money claimed by such appellant before the commissioners, to abide the order of the court on said appeal. Whenever any report of commissioners shall have become final, and whenever any appeal from such report or part of report shall have been finally determined, the said corporation shall upon the payment to each party interested, of the sum determined thereby to be due him or her, as a compensation for property taken, or deposit the same in court for his, or her use, become invested and seized of the title of the land or real estate for which such payment or deposit shall have been made, and entitled to full, free and perfect use and occupancy of the same for the purposes aforesaid. The said commissioners shall be entitled to receive two dollars per day for their services, and their compensation and all the fees of officers previous to, and including the filing of the report of the commissioners, shall be paid by the said company.

In case the title acquired to any lands by the said company in the manner hereinbefore mentioned or otherwise, shall prove defective, they are hereby authorized to take the proceedings prescribed in this section to procure the title from the real owner.

SEC. 9. The said corporation shall have power to consolidate its capital stock with the road of any other

company having the same general direction or location, or become merged therein by way of substitution, upon such terms and conditions as the two companies may agree upon by the consent of a majority of the stockholders, and the two companies when consolidated shall be managed and controlled by the board of directors of both companies acting jointly until the first election of directors of said consolidated companies, when the stockholders of said consolidated companies shall choose, at such time and place as they shall agree upon, a board of directors not to exceed eleven in number, who shall have power to change the name of said company, adopt a common seal, sue and be sued, contract and be contracted with, and shall have all the rights and privileges conferred by this Act and by the laws of all the States and Territories through which the said consolidated road shall pass; and the right of way may be taken as provided for in this Act, which said agreement of consolidation shall be signed by the president, and a copy thereof filed in the office of the secretary of the States and Territories through which said road shall pass.

SEC. 10. The said company is hereby authorized to borrow money to be expended in the construction and equipment of their said road and its appendages, and to issue bonds for the payment thereof, in the usual form, and may make and execute in the corporate name of said company all necessary mortgages, writings, notes, bonds, or other papers, for any liability that may be incurred in the construction or equipment of said road.

SEC. 11. The fee simple of all lands along the line of said route, or otherwise, granted by the Congress of the United States, for the purpose of aiding in the construction of said road may be directly granted to said company, and said company is hereby empowered to receive title thereto, and to transfer said lands from time to time, and to convey in fee simple or otherwise, as soon as, and as often as five miles of said road shall

be constructed and completed, and the track thereof shall be put in running order, and the grant shall not become void, nor the company be dissolved by the non-completion of the entire extent of said road, but shall be good and valid to all intents and purposes for the parts or portions of said road completed, and the said company shall continue and survive to that extent. *Provided*, That if any lands should be granted by the Congress of the United States to the State of Minnesota or the aforesaid company, for the construction of the line of road contemplated in this charter, the Legislature shall have the right to make such restrictions as they may deem expedient, concerning the time and terms of sale of such lands.

SEC. 12. This company shall have the power to enter upon and pass over the railroad of any other company, whose railroad connects with that of this company, with their cars and engines, and any other company whose railroad connects with that of this company, shall have like power to enter upon the railroad and pass over the same with their cars and engines, and such reciprocal use of said respective roads, shall be upon such terms and conditions as shall be agreed upon by the officers of said respective companies, and in case the two companies cannot agree upon terms, then either party may apply to the Supreme Court of this State, whose duty it shall be to fix such terms for the respective parties as may be equitable.

SEC. 13. The said company shall carry and transport the mail of the United States upon such terms as may be agreed upon, and all such freight and passengers as may be offered, if required so to do, upon such terms as are usual, in like cases with like railroad companies.

SEC. 14. If any person shall willfully obstruct, or in any way injure any part of said railroad or anything affixed or appurtenant thereto, and necessary or convenient for its use, or any materials for the construction thereof, or any building, fixture, or other structure,

carriage, engine, or car thereof, such person shall be deemed guilty of a misdemeanor, and shall be liable to be indicated and punished therefor, and shall also be liable to pay the company twice the amount of damage occasioned thereby.

SEC. 15. Every conductor, baggage master, or other agent or servant of said company, and who shall be engaged in the ticket office or on the cars on said road, shall wear upon his hat or cap a plain badge, which shall indicate his office or station, and no conductor or collector shall demand or be entitled to receive any fare or toll, or exercise any control or direction in this station, or be authorized or allowed to interfere with any passenger, baggage, or freight, without wearing such badge.

SEC. 16. Every locomotive engine on said road shall be furnished with a good and sufficient alarm bell or whistle, which shall be fully sounded at least eighty rods distant from every highway crossing, while the engine shall be approaching the same, and passing over said road, and for every violation of this section the said company shall forfeit and pay to whomsoever shall prosecute for the same, the sum of fifty dollars.

SEC. 17. This act is hereby declared to be a public act, and may be amended by any subsequent Legislative assembly in any manner not destroying or impairing the vested rights of said corporation.

SEC. 18. If the company shall, within one year, organize and locate the line of their said road, and within two years grade at least twenty continuous miles of the same from Lake Superior, and shall within five years from the passage of this Act construct and complete a first-class railroad from Lake Superior to the Mississippi River, with the necessary engines and cars running thereon for the transportation of passengers and freight, then, and in such case, the said company shall be entitled to have and to own in fee, all the swamp lands for several miles on either side of the line of said road, and its extension to the

Minnesota river, and its branches, as provided in the second section of this Act, as soon and as fast as every twenty consecutive miles thereof shall be locat d and completed. And for that purpose, as soon as said line, its continuation and branch, shall be located, the lands shall be withheld from market, and upon the completion of any twenty consecutive miles of said road, with cars running thereon, the lands within seven miles of either side thereof shall be certified and conveyed to said company by the proper officers of the State; *Provided*, The whole of said road, extension and branch shall be completed in ten years. And the land shall not be subject to taxation so long as the fee thereof remains in the said company; *Provided*, That the said company shall sell and dispose of all said lands within ten years from the time the same shall be certified and duly transferred to said company from the State.

And provided further, That when the said road shall be completed as hereinbefore provided from Lake Superior to the Mississippi river, or the branch or continuation thereof as aforesaid, if it shall be found that any portion of said swamp lands have been sold or otherwise disposed of, within the said seven miles, by the United States, the amount shall be made up of other swamp lands belonging to the State outside of said seven miles. And if it shall be found that within the said seven miles on each side of said line there shall not be an amount of swamp lands belonging to the State, to at least seven full sections per mile, then the said company shall have the right to select from the swamp lands belonging to the State outside of said line and between the Mississippi river, Lake Superior and Rainy Lake, other lands in an amount in all equal to seven full sections for each and every mile of such completed railroad, branch or continuation.

SEC. 19. This Act shall take effect from and after its passage.

Approved March 8, A. D. 1861.

Special Laws 1863, Chapter V. Act March 6, 1863.

AN ACT

To extend the Time for the Grading and Completion of the Lake Superior and Mississippi Railroad.

Be it enacted by the Legislature of the State of Minnesota :

SEC. 1. That the Lake Superior and Mississippi Railroad Company, as organized under the Act entitled "An Act to amend an Act to incorporate the Nebraska and Lake Superior Railroad Company," approved March 8, A. D. 1861, shall be entitled to have the time for the grading, construction and completion of said road and its branches, extended as follows, to wit : If said company shall, within three years from the time of the passage of this act, grade at least twenty miles of their said road from Lake Superior, and within ten years from said last named time, construct and complete a first-class railroad from Lake Superior to the Mississippi river, with the necessary cars and engines running thereon ; then, and in that case, said company shall be entitled to the lands in said act granted for said line and its branches, as provided in section eighteen (18) of said act, as soon and as fast as each and every twenty miles of said road shall be completed, subject to the provisions and conditions of said Act, and with all the rights, property, privileges and franchises in said Act granted.

SEC. 2. This Act shall take effect and be in force from and after its passage.

Approved March 6, 1863.

Chapter 2 Special Laws of Minnesota 1865.

ACT OF FEBRUARY 23.

"An act to execute the trust created by the act of congress, entitled 'An act making a grant of lands to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior,' approved May five, eighteen hundred and sixty-four, and to grant the said lands to the Lake Superior & Mississippi Railroad Company, to aid in the construction of its railroad, and to amend and continue certain acts in relation to said railroad company.

"*Be it enacted by the Legislature of the State of Minnesota:*

"SECTION 1. That all the rights of way, benefits, privileges, lands and property granted to the State of Minnesota, by virtue of the act of congress of the United States, entitled 'An act making a grant of lands to the State of Minnesota, to aid in the construction of the railroad from St. Paul to Lake Superior,' approved May five, A. D. 1864, be and the same are hereby accepted, and the same are hereby granted, vested in and transferred to the Lake Superior & Mississippi Railroad Company, its successors and assigns, to be held, used or sold and disposed of by said railroad company, to aid in the construction of a railroad, as contemplated and provided by said act of congress, and for the equipment and operation of the same, for no other purpose whatever, the same to be held, used and disposed of, upon, and subject to the conditions in said act of congress provided, and upon the conditions in this act contained. That in consideration of lands granted by this act, and of the lands, rights, privileges, and franchises which have heretofore been granted to said railroad company, the said company shall, on or

before the first day of March of each and every year after said railroad is completed and in operation, pay into the treasury of the state; three per cent. on the gross earnings of said railroad, which sum shall be in lieu and in full of all taxation and assessment upon the said railroad, its appurtenances and appendages, and all other property of said company, real, personal and mixed, including the lands hereby and heretofore granted to said company, or so intended to be granted.

"*Provided, however*, that the lands hereby and heretofore granted to said company shall be subject, like lands of individuals, to be taxed as fast as the same are sold or conveyed, or contracted to be sold, or are leased by said company, or the stumpage upon any lands is sold or contracted to be sold by said company; but no mortgage or trust deed executed by said company upon said lands shall, for the purpose of taxation be construed as such sale, conveyance, lease or contract of sale. And for the purpose of ascertaining the gross earnings aforesaid of said railroad, an accurate account of said earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the Treasurer of State on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavit of the treasurer of said company, and for the purpose of ascertaining the truth of such affidavit, and the correctness of such abstract, full power is hereby vested in the governor of this State, or any other person appointed by law to examine the books and the officers and employes of said company, or other persons under oath, and if any person on such examination shall knowingly or willfully swear falsely, every such person shall be subject to the pains and penalties of perjury. And for securing to the state the payment of the aforesaid per centum it is hereby declared that the state shall have a lien upon the railroad of said company, and upon all the other property of said company, real, personal and mixed, and the lien hereby secured

to the state shall take and have precedence of all demands, decrees and judgments against said company.

"*Provided, further*, that said railroad land shall be taxed as other lands in the state, in five years after the said company shall become entitled to said lands.

"SEC. 2. That whenever within the time in said act of congress, and this act provided for the completion of said railroad, said company shall complete ten miles of its said line of road, with the cars running thereon, it shall be entitled to a conveyance, to be executed by the governor of this state, of the swamp lands heretofore granted to said company by the act entitled 'An act to incorporate the Nebraska & Lake Superior Railroad Company', approved March eight, 1861, and the act of March six, 1863, amendatory thereof, appertaining to such ten miles, and so from time to time as each additional ten miles shall be completed as aforesaid, anything in either of said acts to the contrary notwithstanding. And whenever twenty consecutive miles of said road be completed, as provided for in said act of congress or under such other conditions as congress may by law provide, then the governor of this state shall certify the same, and patents shall issue to said company, as assignees of the state, for the quantity of lands to which said state would then be entitled under said act of congress pertaining to such completed portion of said road, and so on from time to time as each additional twenty miles of said road shall be so completed, and whenever said road is fully completed, so as to connect the Mississippi river with the waters of Lake Superior, in the State of Minnesota, all the residue of the lands granted by said several acts shall be conveyed to said company or its assigns.

"Provided, that said company shall not be entitled to any of the lands granted by this act until ten miles of said road are graded and the cars running thereon from the head of Lake Superior, within this state.

"SEC. 3. The said grants of lands to said company are on the conditions that said company shall cause

twenty consecutive miles of said railroad to be completed, with cars running thereon, within three years from the fourth of July, 1865, and the whole of said line from St. Paul to the waters of Lake Superior, within five years from the said fourth of July, 1865, and that in default thereof, all of the said lands named in said act of congress, pertaining to the uncompleted portion of said road shall be forfeited to the state.

" SEC. 4. And the said company shall, by the first of July next after the passage of this act, deposit the sum of twenty thousand dollars or that amount of United States bonds, with the treasurer of state, to be forfeited to the state in case of failure to complete said road within the time as provided in this act, but said deposit may be withdrawn by said company whenever ten miles of its said road are completed and the cars running thereon.

" SEC. 5. The said corporation may make and negotiate, by sale or otherwise, its mortgage or other bonds, and that any mortgage, trust deed, or instrument affecting the franchises of said corporation, or any of its property, may be filed and recorded in the office of the secretary of state of this state and that from the time of filing of any such deed, mortgage or instrument as aforesaid, the record thereof shall be notice to all persons of such lien or interest, and of the contents of such deed or instrument, and it shall not be necessary to record any such conveyance or instrument in the county in which the property affected is situated.

" SEC. 6. That said company shall have the right at any time to select and designate the swamp lands granted to aid in the construction of said road, and from time to time certify the same to the governor, to be held for its benefit and conveyed in accordance with this act, as fast as said company may be entitled to the same, under the conditions named in section two of this act.

" SEC. 7. That said railroad company shall transport all cars, freights and passengers delivered to it for

such purpose by any connecting company, as provided for in the eighth section of said act of congress, and shall have the right and privilege of transporting or having transported, its cars, freights and passengers, as in said section provided, over the road of any such connecting company upon the terms in said act provided; and that section twelve of the act of March 8th, 1861, be and the same is repealed.

"SEC. 8. That said company may construct and maintain telegraph lines upon its road, and charge fees for transmitting messages thereon.

"SEC. 9. That the number of directors of said company may be by resolution of the present board, (increased) to any number, not exceeding eleven. That any citizen of the United States shall be eligible to the office of director, and that the board of directors may meet and transact business in or out of this State.

"SEC. 10. This act shall take effect and be in force from and after its passage.

"Approved February 23, 1865."

"Chapter 8, Special Laws of Minnesota 1865.

ACT OF MARCH 3.

"An act in relation to the taxation of lands granted to the Lake Superior & Mississippi Railroad Company.

"*Be it enacted by the Legislature of the State of Minnesota:*

"SECTION 1. That whenever any lands heretofore or hereafter granted to the Lake Superior & Mississippi Railroad Company to aid in the construction or completion of its road or branches, shall be contracted to be sold, conveyed or leased by said company, the same

shall be placed upon the tax list by the proper officer for taxation as other real estate, for the year succeeding that in which such contract for a sale, conveyance or lease thereof shall have been made, but in enforcing a collection of taxes thereon, the title or interest of the said company or of any trustee or mortgagee thereof shall be in no wise impaired or affected thereby, but the improvements thereon and all the interest of the purchaser or lessee therein, may and shall in case of default of the payment of taxes upon such land, be sold to satisfy the same, and it shall be the duty of the proper officers to assess and collect such taxes in accordance with the general laws relating to the assessment and collection of taxes, and that the provisions of the several acts in relation to the taxation of the lands of said company, so far as the mode of taxing such lands conflict with the provisions of this act, shall be and they are repealed.

Provided, that said company shall, during the first three years, after thirty miles of said railroad shall be completed and in operation, on or before the first day of March in each and every year, pay into the Treasury of the state, one per cent. on the gross earnings of said railroad, the first payment to be made on the first day of March next after thirty miles of the said railroad shall be completed and in operation, and shall, during the seven years next ensuing, after the expiration of the three years aforesaid, pay into the Treasury of this State, on or before the first day of March of each and every year, two per cent of the gross earnings of said railroad, and shall, from and after the expiration of said seven years, on or before the first day of March, of each and every year, pay into the Treasury of this State three per cent. of the gross earnings of said railroad; and the payment of such per centum annually, as aforesaid, shall be and is in full of all taxation and assessment whatever. And for the purpose of ascertaining the gross earnings

aforesaid, an accurate account of such earnings shall be kept by said company, an abstract whereof shall be furnished by said company to the Treasurer of this State, on or before the first day of February in each year, the truth of which abstract shall be verified by the affidavits of the treasurer and secretary of said company, and for the purpose of ascertaining the truth of such affidavits, and the correctness of such abstract, full power is hereby vested in the governor of this state, or any other person appointed by law to examine under oath the officers and employees of said company, or other persons; and if any person so examined by the Governor or other authorized person, shall knowingly or willingly swear falsely concerning the matter aforesaid, every such person is declared to have committed perjury. And for securing to the state the payment of the aforesaid per centum, it is hereby declared that the state shall have a lien upon the railroad of said company, and upon all the property, estate and effects of said company whatever, real, personal or mixed, and the lien hereby secured to the State shall take and have precedence of all demands, decrees and judgments against said company.

"SEC. 2. That upon the filing by said company in the office of the Secretary of State of a notification of its acceptance of this act, the same shall become obligatory upon the State and upon said company; provided, that said notification shall be given within sixty days.

"SEC. 3. This act shall take effect and be in force from and after its passage.

"Approved March 3, 1865."

Chapter 168 of Laws of Minnesota, 1895.

Approved March 18th, 1895.

AN ACT

relating to the taxation of certain lands owned by railroad companies in this state, and repealing laws and parts of laws relating to the taxation of the same, and to provide for the submission of this act to the people of this state for their approval or rejection.

Be it enacted by the Legislature of the State of Minnesota:

SECTION 1. All lands in this state heretofore or hereafter granted by the state of Minnesota or the United States, or the territory of Minnesota to any railroad company shall be assessed and taxed as other lands are taxed in this state, except such parts of said lands as are held, used or occupied for right of way, gravel pits, sidetracks, depots and all buildings and structures which are necessarily used in the actual management and operation of the railroads of said companies.

Provided that said railroad companies shall continue to pay taxes into the state treasury upon their gross earnings in the same manner and in the same amount as now provided by law. And that nothing in this act contained shall be construed to repeal said laws except in so far as the same relate to the tax upon said lands.

SEC. 2. Such portion or portions of any act or acts, general or special, of the state or territory of Minnesota heretofore enacted, which provides or attempts to provide for any exemption of lands hereby declared taxable, from taxation, or for any other method of taxing said last mentioned lands different from the method of taxing other lands in this state, or which are in any manner inconsistent with the provisions of this act, are hereby repealed.

SEC. 3. If this act shall be held to be void so far as it applies to the lands of any particular railroad com-

pany in this state, it shall not be ground for declaring it void or inapplicable to any other company not similarly situated.

SEC. 4. This act shall be submitted to the people of this state for their approval or rejection at the next general election for the year eighteen hundred and ninety-six (1896).

The secretary of state shall cause to be printed upon the form of ballots used in voting for state officers at the next general election, in manner conformable with the requirements of the general election law the words:

For taxation of railroad lands---------- Yes.
No.

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and each electing voter at such election shall designate his vote by a cross mark made opposite one or the other of the said words "Yes" and "No", and the said election shall in all respects conform so far as may be to the requirements of the general election law, and the returns of said election shall be made, canvassed and certified and the result thereof declared in the manner provided by law for returning, certifying and canvassing votes cast for state officers.

SEC. 5. This act shall take effect and be in force on and after its passage.

Approved March 19th, 1895.

Chap. LXXIX.

AN ACT

making a Grant of Lands to the State of Minnesota, to aid in the construction of the Railroad from Saint Paul to Lake Superior.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That there be, and there is hereby, granted to the state of Minnesota for the purpose of aiding in the construction of a railroad in said state from the city of Saint Paul to the head of Lake Superior, every alternate section of public land of the United States, not mineral, designated by odd numbers, to the amount of five alternate sections per mile on each side of the said railroad on the line thereof, within the state of Minnesota; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, appropriated, reserved, or otherwise disposed of any sections, or any part thereof, granted as aforesaid, or that the right of preemption or homestead settlement has attached to the same, then it shall be the duty of the Secretary of the Interior to select from the lands of the United States nearest to the lines of sections above specified, in alternate sections or parts thereof, so much public land of the United States, not mineral, as shall be equal in amount to such lands as the United States have sold or otherwise appropriated, or to which the rights of preemption or homestead settlement may have attached, as aforesaid; which lands thus selected in lieu of those sold, reserved, or otherwise appropriated or disposed of, or to which the rights of preemption or homestead settlement may have attached, as aforesaid, together with the sections and parts of sections designated as

aforesaid, and appropriated as aforesaid, shall be held and disposed of by the said state for the use and purpose aforesaid: *Provided*, That the land to be so selected shall in no case be located farther than twenty miles from the lines of said road: *and provided, further*, That the lands hereby granted for and on account of said road shall be exclusively applied in the construction of the same, and for no other purpose whatever, and shall be disposed of only as the work progresses through the same, as in this act hereinafter provided: *provided, also*, That no part of the land granted by this act shall be applied to aid in the construction of any railroad, or part thereof, for the construction of which any previous grant of land may have been made by congress: *And provided, further*, That any and all lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be, and the same are hereby, reserved to the United States, from the operations of this act, except so far as it may be found necessary to locate the route of the said road through such reserved lands; in which case the right of way only shall be granted, subject to the approval of the President of the United States: *provided, further*, That the minimum price of the even sections and parts of sections of the public lands of the United States, within the limits of ten miles on each side of the line of said road, shall be two dollars and fifty cents per acre.

SEC. 2. *And be it further enacted*, That whenever said state shall cause to be completed twenty consecutive miles of any portion of said railroad, supplied with all necessary drains, culverts, viaducts, crossings, sidings, bridges, turn outs, watering-places, depots, equipments, furniture, and all other appurtenances of a first-class railroad, patents shall issue conveying the right and title to said lands to said state, on each side

of the road, as far as the same is completed, and coterminous with said completed section, not exceeding the amount aforesaid, and patents shall in like manner issue as each twenty miles of said road is completed: *provided, however*, That no patents shall issue for any of said lands unless there shall be presented to the Secretary of the Interior a statement, certified by the governor of the state of Minnesota, that such twenty miles have been completed in the manner required by this act, and setting forth with certainty the points where such twenty miles begin and where the same end.

SEC. 3. *And be it further enacted*, That when the said road shall be definitely located, and a plat thereof filed with the Secretary of the Interior, the lands hereby granted shall not thereafter be subject to settlement, pre-emption, or private entry adverse to this grant.

SEC. 4. *And be it further enacted*, That the said state, in addition to the grant heretofore mentioned, is hereby authorized to locate the said road over any public lands of the United States, not otherwise appropriated, reserved, or disposed of, and that the right of way over said lands of the United States for the purpose aforesaid is hereby granted to said state to the width of one hundred feet on each side of said road as located.

SEC. 5. *And be it further enacted*, That the said lands hereby granted when patented to said state, shall be subject to the disposal of said state for the purposes aforesaid, and for no other; and the said railroad shall be and remain a public highway for the use of the government of the United States, free from all toll or other charge, for the transportation of any property or troops of the United States.

SEC. 6. *And be it further enacted*, That if said road is not completed within eight years from the time of the passage of this act, as provided herein, no further patents shall be issued for said lands, and no further sale shall be made, and the lands unsold shall revert to the United States.

SEC. 7. *And be it further enacted*, That the United States mail shall be transported over said road, under the direction of the Post-Office Department, at such price as congress may by law direct: Provided, That until such price is fixed by law the Postmaster-General shall have the power to determine the same.

SEC. 8. *And be it further enacted*, That any railroad which may hereafter be constructed from any point on the Bay of Superior, in the state of Wisconsin, shall be permitted to connect with the said railroad, for the construction of which the said lands are hereby granted, at any point which may be selected by the president and directors of said railroad company so permitted to connect their said road, and the said railroad company so permitted to connect shall have the right and privilege to transport, or have transported, over the track of said railroad, for the construction of which the said lands are hereby granted, all or any of its cars, passengers, or freights, and the said railroad company controlling the said road, for the construction of which the said lands are hereby granted, shall have the same right and privilege to transport or have transported all or any of its cars, freights, or passengers over the track of the said railroad of the company so permitted to connect, and said transportation shall be paid by the railroad company using, to the railroad company according the same, at the usual rates or charges, which may be imposed by the said company upon all other cars, freights, or passengers.

Approved, May 5, 1864.

Chap. CLXXXIII.

AN ACT

relating to Lands granted to the State of Minnesota to aid in Constructing Railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That whenever it shall appear that the United States have sold or disposed of any lands granted to the Territory or State of Minnesota for the purpose of aiding in the construction of railroads, after the definite location of the line of road, and before the withdrawal of said lands from sale at the proper local land office, said State may by its agent select in lieu of the lands so sold or disposed of, from any of the lands of the United States subject to sale, being odd numbered sections, within twenty miles of the line of the proper road, a quantity of land equal to that so sold or disposed of; and the lands so selected shall be substituted for those so sold or disposed of by the United States, and may be disposed of by said State in all respects as if said substituted lands had been parcel of the original grant to the State. Provided, however, that nothing herein contained shall be so construed as to diminish the quantity of land granted by act of May fifth, eighteen hundred and sixty-four, to the State of Minnesota to aid in the construction of a railroad from St. Paul to Lake Superior.

SEC. 2. And be it further enacted, That the time named in the Act granting lands to the Territory of Minnesota to aid in the construction of a certain railroad, "from Saint Paul and from Saint Anthony, by the way of Minneapolis, to a convenient point of junction west of the Mississippi River, to the southern boundary of the Territory", approved March third, eighteen hundred and fifty-seven, for the construction and completion of said road, is hereby extended for seven years from the passage of this Act.

SEC. 3. And be it further enacted, That all the lands heretofore granted to the Territory and State of Minnesota to aid in the construction of railroads, shall be certified to said State by the Secretary of the Interior, from time to time, whenever any of said roads shall be definitely located, and shall be disposed of by said State in the manner and upon the conditions provided in the particular Act granting the same, as modified by the provisions of this Act: Provided, That when the original quantity granted to aid in the construction of any road has been increased, the quantity authorized to be sold from time to time shall be increased correspondingly: And provided, further, That on the completion of any ten miles of road, the State may sell one-half the quantity of lands which said State is authorized to dispose of on the completion of twenty miles.

SEC. 4. And be it further enacted, That the lands granted by any act of Congress to the State of Minnesota, to aid in the construction of railroads in said State, specifically, lying in place, on any division of ten miles of road, shall not be disposed of until the road shall be completed through and coterminus with the same: Provided, however, That this provision shall not extend to any lands authorized to be taken to make up deficiencies.

SEC. 5. And be it further enacted, That so much of any act as conflicts with the provisions of this Act is hereby repealed.

Approved July 13, 1866.

"Article IX.

SECTIONS 1 AND 3, CONSTITUTION OF THE STATE OF MINNESOTA.

"SEC. 1. All taxes to be raised in this state shall be as nearly equal as may be, and all property on which taxes are to be levied shall have a cash valuation, and be equalized and uniform throughout the state: provided, that the legislature may, by general law or special act, authorize municipal corporations to levy assessments for local improvements upon the property fronting upon such improvements, or upon the property to be benefited by such improvements, or both, without regard to a cash valuation, and in such manner as the legislature may prescribe: *and provided, further*, that for the purpose of defraying the expenses of laying water-pipes and supplying any city or municipality with water, the legislature may, by general or special law, authorize any such city or municipality, having a population of five thousand or more, to levy an annual tax or assessment upon the lineal foot of all lands fronting on any water-main or water-pipes laid by such city or municipality within corporate limits of said city, for supplying water to the citizens thereof, without regard to the cash value of such property, and to empower such city to collect any such tax assessments, or fines or penalties for failure to pay the same, or any fine or penalty for any violation of the rules of such city or municipality in regard to the use of water, or for any water-rate due for the same."

"SEC. 3. Laws shall be passed taxing all moneys, credits, investments in bonds, stocks, joint-stock companies, or otherwise, and also all real and personal property, according to its true value in money; but public burying-grounds, public school-houses, public hospitals, academies, colleges, universities and all

seminaries of learning, all churches, church property used for religious purposes, and houses of worship, institutions of purely public charity, public property used exclusively for any public purpose, and personal property to an amount not exceeding in value two hundred dollars for each individual, shall, by general laws, be exempt from taxation."

Constitutional Amendment, adopted November 8, 1871, known as Sec. 32a. Article 4, of the Constitution of the State of Minnesota.

Any law providing for the repeal or amendment of any law or laws heretofore or hereafter enacted, which provides that any railroad company now existing in this state, or operating its road therein, or which may be hereafter organized, shall in lieu of all other taxes and assessments upon their real estate, roads, rolling stock, and other personal property, at and during the time and periods therein specified, pay into the treasury of this state a certain percentage therein mentioned of the gross earnings of such railroad companies now existing or hereafter organized, shall, before the same shall take effect and be enforced, be submitted to a vote of the people of the state, and be adopted and ratified by a majority of the electors of the state voting at the election at which the same shall be submitted to them.